

THE GENERAL STATUTES OF NORTH CAROLINA

1969 CUMULATIVE SUPPLEMENT

Completely Annotated, under the Supervision of the Department
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF

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AND SYLVIA FAULKNER

Volume 1C

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Preface

This Cumulative Supplement to Replacement Volume 1C contains the general laws of a permanent nature enacted at the 1966, 1967 and 1969 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

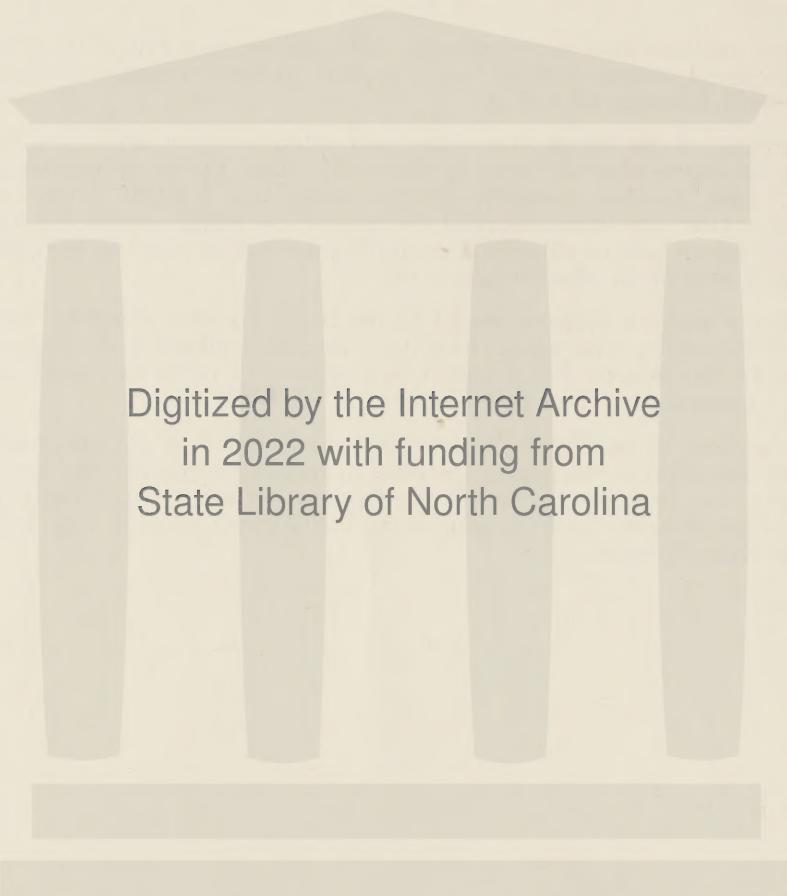
Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein appears in the Cumulative Supplement to Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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Scope of Volume

Statutes:

Permanent portions of the general laws enacted at the 1967 and 1969 Sessions of the General Assembly affecting Chapters 15 through 20 of the General Statutes.

Annotations:

Sources of the annotations:

- North Carolina Reports volumes 265 (p. 217)-275 (p. 341).
- North Carolina Court of Appeals Reports volumes 1-5 (p. 227).
- Federal Reporter 2nd Series volumes 347 (p. 321)-410 (p. 448).
- Federal Supplement volumes 242 (p. 513)-298 (p. 1200).
- United States Reports volumes 381 (p. 532)-394 (p. 575).
- Supreme Court Reporter volumes 86-89 (p. 2151).
- North Carolina Law Review volumes 43 (p. 667)-47 (p. 731).
- Wake Forest Intramural Law Review volumes 2-5.

The General Statutes of North Carolina 1969 Cumulative Supplement

VOLUME 1C

Chapter 15.

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15-5.3, 15-5.4. [Repealed.]

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ARTICLE 1.

*General Provisions.***§ 15-1. Statute of limitations for misdemeanors.**

Editor's Note.—For case law survey as to criminal law and procedure, see 44 N.C.L. Rev. 970 (1966); 45 N.C.L. Rev. 910 (1967).

No statute of limitations bars the prosecution of a felony. State v. Johnson, 275 N.C. 264, 167 S.E.2d 274 (1969).

Date on Which, etc.—

In accord with 1st paragraph in original. See State v. Hundley, 272 N.C. 491, 158 S.E.2d 582 (1968).

In accord with 2nd paragraph in original. See State v. Hundley, 272 N.C. 491, 158 S.E.2d 582 (1968).

§ 15-4. Accused entitled to counsel.

Applied in State v. Davis, 270 N.C. 1, 153 S.E.2d 749 (1967), commented on in 46 N.C.L. Rev. 379 (1968).

§§ 15-4.1 to 15-5.1: Repealed by Session Laws 1969, c. 1013, s. 12, effective July 1, 1969.

§ 15-5.2. Additional costs in criminal cases to assist in appropriations required to provide counsel for indigent defendants. — In all criminal cases in the superior courts of this State there shall be taxed against the defendant the sum of four dollars (\$4.00) to be paid into the State treasury for the purpose of assisting in the appropriation required under chapter 7A, subchapter IX and a sum of one dollar (\$1.00) to be taxed against each defendant as aforesaid to be paid into the general fund of the county wherein the case is tried to assist counties with the appropriations that will be required as the result of chapter 7A, subchapter IX.

This section shall apply only in those counties in which there is not yet established a district court. This section is repealed effective January 1, 1971. (1963, c. 1080, s. 4; 1969, c. 1013, s. 6.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, substituted "chapter 7A, subchapter IX" for "Session Laws

1963, chapter 1080" in two places in the first paragraph and added the second paragraph.

§§ 15-5.3, 15-5.4: Repealed by Session Laws 1969, c. 1013, s. 12, effective July 1, 1969.

§ 15-6.1. Changing place of confinement of prisoner committing offense. — In all cases where a defendant has been convicted in a court inferior to the superior court and sentenced to a term in the county jail or to serve in some county institution other than under the supervision of the State Department of Correction, and such defendant is subsequently brought before such court for an offense committed prior to the expiration of the term to be served in such county institution, upon conviction, plea of guilty or nolo contendere, the judge shall have the power and authority to change the place of confinement of the prisoner and commit such defendant to work under the supervision of the State Department of Correction. This provision shall apply whether or not the terms of the new sentence are to run concurrently with or consecutive to the remaining portion of the old sentence. (1953, c. 778; 1957, c. 65, s. 11; 1967, c. 996, s. 16.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State

Highway Commission" in two places in the first sentence.

§ 15-6.2. Concurrent sentences for offenses of different grades or to be served in different places.

Concurrent sentences may be imposed for separate offenses, even though one is for a misdemeanor and the other a felony, so that one is required to be served in the State's prison and one in the county

jail. State v. Brooks, 271 N.C. 462, 156 S.E.2d 676 (1967).

Applied in State v. Efird, 271 N.C. 730, 157 S.E.2d 538 (1967).

§ 15-10. Speedy trial or discharge on commitment for felony.

This section, etc.—

In accord with original. See State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

It requires simply, etc.—

In accord with original. See State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969); State v. Cavallaro, 274 N.C. 480, 164 S.E.2d 168 (1968).

This section merely provides that under certain circumstances a defendant who has not been speedily tried shall be released from custody. It does not require that the prosecution against him be dismissed. State v. Johnson, 275 N.C. 264, 167 S.E.2d 274 (1969).

And not that, etc.—

In accord with original. See State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969); State v. Cavallaro, 274 N.C. 480, 164 S.E.2d 168 (1968).

The fundamental law of this State grants to every accused the right to a speedy trial. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

Such Right Is a Shield for Accused's Protection.—The right to a speedy trial on the merits is not designed as a sword for defendant's escape, but a shield for his protection. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

Both the State and the accused should desire a speedy trial. Both want to preserve the means of proof of the case. From the standpoint of the State, an old case is more vulnerable to cross-examination and less easily persuades the jury. The accused is anxious to escape the public suspicion created by the accusation

and the mental strain of standing accused. The right to a speedy trial, however, is the personal right of the accused, and it is not designed as a sword for his escape, but rather as a shield for his protection. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

The right to a speedy trial is designed to prohibit arbitrary and oppressive delays which might be caused by the fault of the prosecution. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

There is no statutory formula dictating the time within which trial must be had. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

But Four Factors Are Considered in Determining Whether Denial of Speedy Trial Is Unconstitutional.—The four generally accepted interrelated factors to be considered together in reaching a determination of whether the denial of a speedy trial assumes due process proportions are the length of the delay, the reason for the delay, the prejudice to the defendant, and waiver by defendant. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

An accused waives his right to a speedy trial unless he demands it. State v. Johnson, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

Cited in Pitts v. North Carolina, 267 F. Supp. 870 (M.D.N.C. 1967)

§ 15-10.1. Detainer; purpose; manner of use.—Any person confined in the State prison of North Carolina, subject to the authority and control of the State Department of Correction, or any person confined in any other prison of North Carolina, may be held to account for any other charge pending against him only upon a written order from the clerk or judge of the court in which the charge originated upon a case regularly docketed, directing that such person be held to answer the charge pending in such court; and in no event shall the prison authorities hold any person to answer any charge upon a warrant or notice when the charge has not been regularly docketed in the court in which the warrant or charge has been issued: Provided, that this section shall not apply to any State agency exercising supervision over such person or prisoner by virtue of a judg-

ment, order of court or statutory authority. (1949, c. 303; 1953, c. 603; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" near the beginning of this section.

Cited in *Pitts v. North Carolina*, 267 F. Supp. 870 (M.D.N.C. 1967).

§ 15-10.2. Mandatory disposition of detainees—request for final disposition of charges; continuance; information to be furnished prisoner.—(a) Any prisoner serving a sentence or sentences within the State prison system who, during his term of imprisonment, shall have lodged against him a detainer to answer to any criminal charge pending against him in any court within the State, shall be brought to trial within eight (8) months after he shall have caused to be sent to the solicitor of the court in which said criminal charge is pending, by registered mail, written notice of his place of confinement and request for a final disposition of the criminal charge against him; said request shall be accompanied by a certificate from the Commissioner of Correction stating the term of the sentence or sentences under which the prisoner is being held, the date he was received, and the time remaining to be served; provided that, for good cause shown in open court, the prisoner or his counsel being present, the court may grant any necessary and reasonable continuance.

(b) The Commissioner of Correction shall, upon request by the prisoner, inform the prisoner in writing of the source and contents of any charge for which a detainer shall have been lodged against such prisoner as shown by said detainer, and furnished the prisoner with the certificate referred to in subsection (a). (1957, c. 1067, s. 1; 1967, c. 996, s. 15.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1957, substituted "Commissioner of Correction" for "Director of Prisons" in subsections (a) and (b).

Purpose of Section.—The primary purpose of this section is to provide a prisoner with a means by which he may require the State to try all the criminal charges against him to the end that he and the authorities may know the full extent of his debt to society for his criminal activities and that he may plan for his release when the debt has been satisfied. The presence of a detainer in his prison files jeopardizes his chances for parole, for proper good behavior credits, and for work release. *State v. White*, 270 N.C. 78, 153 S.E.2d 774 (1967).

What Section Requires. — This section

requires the solicitor to try a prisoner who has a detainer lodged against him and who is serving a sentence in the State prison within eight months after the prisoner shall have requested a trial as provided therein. *State v. Johnson*, 3 N.C. App. 420, 165 S.E.2d 27 (1969).

Prisoner Must Follow Section's Requirements.—Where defendant did not follow the requirements of this section by making his demand upon the solicitor by registered mail, but instead he sent a letter to the clerk of the superior court and the solicitor did not receive the notice, the defendant is not entitled to his release for failure of the State to bring him to trial within eight months. *State v. White*, 270 N.C. 78, 153 S.E.2d 774 (1967).

§ 15-10.3. Mandatory disposition of detainees—procedure; return of prisoner after trial.—The solicitor, upon receipt of the written notice and request for a final disposition as hereinbefore specified, shall make application to the court in which said charge is pending for a writ of habeas corpus ad prosequendum and the court upon such application shall issue such writ to the Commissioner of Correction requiring the prisoner to be delivered to said court to answer the pending charge and to stand trial on said charge within the time hereinbefore provided; upon completion of said trial, the prisoner shall be returned to the State prison system to complete service of the sentence or sentences under which he was held at the time said writ was issued. (1957, c. 1067, s. 2; 1967, c. 996, s. 15.)

Editor's Note. — The 1967 amendment, effective Aug. 1, 1967, substituted "Commissioner of Correction" for "Director of Prisons."

ARTICLE 3.

Warrants.

§ 15-18. Who may issue warrant.—The following persons respectively have power to issue process for the apprehension of persons charged with any offense, and to execute the powers and duties conferred in this chapter, namely: Any justice, judge, or magistrate of the General Court of Justice, presiding officers of inferior courts, justices of the peace, mayors of cities, or other chief officers of incorporated towns. (1868-9, c. 178, subc. 3, s. 1; Code, s. 1132; Rev., s. 3156; C. S., s. 4522; 1969, c. 44, s. 27.)

Editor's Note.—The 1969 amendment substituted "Any justice, judge, or magistrate of the General Court of Justice" for "The Chief Justice and the associate justices of the Supreme Court, the judges of the superior court, judges of criminal courts" following the colon.

The issuance of a warrant of arrest is a judicial act. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

§ 15-19. Complainant examined on oath.

Opinions of Attorney General.—Honorable H.M. Shelton, Sheriff of Polk County, 9/17/69.

Justice Must Comply with Requirements of Section.—While § 15-18 confers authority to issue warrants upon justices of the peace, a justice of the peace may lawfully exercise such authority only by complying with the requirements of this section and § 15-20. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

Same—No Special Form Required.

In accord with original. See *State v. Higgins*, 266 N.C. 589, 146 S.E.2d 681 (1966).

§ 15-20. Warrant issued; contents; summons instead of warrant in misdemeanor cases.—If it shall appear from such examination that any criminal offense has been committed, the magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it is directed forthwith to take the person accused of having committed the offense, and bring him before a magistrate, to be dealt with according to law. A justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county.

In all cases of misdemeanors any officer authorized by law to issue warrants in criminal actions may issue a summons instead of a warrant of arrest when he has reasonable ground to believe that the person accused will appear in response to the same. The Chief Judge of the District Court Division of the General Court of Justice of each district shall devise and issue a recommended policy which may be followed on the use of a summons instead of a warrant of arrest. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate, or some officer having the jurisdiction of a magistrate, at a stated time and place. If any person summoned fail, without good cause, to appear as commanded by the summons, he may be punished by a fine of not more than twenty-five dollars (\$25.00). Upon such failure to appear the said officer shall issue a warrant of arrest. If after issuing a summons the said officer becomes satisfied that the person summoned will not appear as commanded by the summons

Justice of the Peace.—While this section confers authority to issue warrants upon justices of the peace, a justice of the peace may lawfully exercise such authority only by complying with the requirements of §§ 15-19 and 15-20. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

on oath.

Signature of Affiant Not Essential.—This section requires the magistrate, before issuing a warrant, to examine the complainant on oath. It does not provide that the signature of affiant is necessary to the validity of the complaint or affidavit. *State v. Higgins*, 266 N.C. 589, 146 S.E.2d 681 (1966).

Where the warrant discloses that the affiant was duly sworn before a competent official and is signed by such official, and the name of the affiant is set forth, the fact that the affiant does not subscribe the affidavit is not a fatal defect. *State v. Higgins*, 266 N.C. 589, 146 S.E.2d 681 (1966).

he may at once issue a warrant of arrest. In all proceedings held pursuant to said summons the hearing and trial shall be upon the summons in the same manner and with the same effect as if the hearing and trial were on a warrant. (1868-9, c. 178, subc. 3, s. 3; Code, s. 1134; 1901, c. 668; Rev., s. 3158; C. S., s. 4524; 1955, c. 332; 1969, c. 1062, s. 1.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, added the second sentence of the second paragraph.

Opinions of Attorney General.—Honorable H.M. Shelton, Sheriff of Polk County, 9/17/69.

Justice Must Comply with Requirements of Section.—While § 15-18 confers authority to issue warrants upon justices of the peace, a justice of the peace may lawfully exercise such authority only by complying with the requirements of § 15-19 and this

section. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

This section vests discretionary power, etc.—

After the required examination on oath of the complainant and any witnesses who may be produced by him, the justice of the peace is authorized to issue the warrant upon his determination there is sufficient ground for the arrest and prosecution of the accused person for the described criminal offense. *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

§ 15-21. Where warrant may be executed; noting day of delivery to officer; copy to each defendant.—Warrants issued by any justice, judge, clerk, or magistrate of the General Court of Justice, or any judge of a criminal court, may be executed in any part of this State; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in § 15-22.

The officer to whom the warrant is addressed shall note on it the day of its delivery to him and deliver a copy thereof to each of the defendants. A failure to comply shall not invalidate the arrest. (1868-9, c. 178, subc. 3, s. 4; Code, s. 1135; Rev., s. 3159; C. S., s. 4525; 1957

of the Supreme Court, or by any judge of the superior court, or of a criminal court" in the first paragraph.

Editor's Note.—The 1969 amendment substituted "justice, judge, clerk, or magistrate of the General Court of Justice, or any judge of a criminal court" for "justice

§ 15-22. Warrant indorsed or certified and served in another county.—If the person against whom any warrant is issued by a justice of the peace or chief officer of a city or town shall escape, or be in any other county out of the jurisdiction of such justice or chief officer, it shall be the duty of any justice of the peace, or any other magistrate within the county where such offender shall be, or shall be suspected to be, upon proof of the handwriting of the magistrate or chief officer issuing the warrant, to indorse his name on the same, and thereupon the person, or officer to whom the warrant was directed, may arrest the offender in that county: Provided, that an officer to whom a warrant charging the commission of a felony is directed, who is in the actual pursuit of a person known to him to be the one charged with the felony, may continue the pursuit without such indorsement. The justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county, and such warrant when so indorsed as herein prescribed shall authorize and compel the sheriff or other officer of any county in the State, in which such indorsement is made, to execute the same. Whenever a justice of the peace or the chief officer of a city or town shall attach to his warrant a certificate under the hand and seal of the clerk of the superior court of his county certifying that he is a justice of the peace of the county or the chief officer of a city or town in the county and that the warrant bears his genuine signature, the warrant may be executed in any part of the State in like manner as warrants issued by justices or judges of the appellate division, judges of the superior court, or judges of criminal courts without any indorsement of any justice of the peace or magistrate of the county in which

it may be served. (1868-9, c. 178, subc. 3, s. 5; Code, s. 1136; 1901, c. 668; Rev., s. 3160; 1917, c. 30; C. S., s. 4526; 1949, c. 168; 1969, c. 44, s. 29.)

Editor's Note.—

The 1969 amendment substituted "justices or judges of the appellate division"

for "justices of the Supreme Court" in the last sentence.

ARTICLE 4.

Search Warrants.

§ 15-25. Search warrants for contraband, evidence, and instrumentalities of crime.—(a) Any justice, judge, clerk, or assistant or deputy clerk of any court of record, any justice of the peace, or any magistrate of the General Court of Justice may issue a warrant to search for any contraband, evidence, or instrumentality of crime upon finding probable cause for the search.

(b) Any search warrant issued by any Justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court may be executed anywhere within the State. Any search warrant issued by any other official of the General Court of Justice may be executed as provided in chapter 7A of the General Statutes. Any search warrant issued by any other judicial official or officer of any other court may be executed only within the territorial jurisdiction of such official or court.

(c) The warrant may be executed by any law-enforcement officer acting within his territorial jurisdiction whose subject matter jurisdiction encompasses the crime with which the object of the search is involved.

(d) The search warrant shall be returnable as other criminal process is required to be. (1868-9, c. 178, subc. 3, s. 38; Code, s. 1171; Rev., s. 3163; C. S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8.)

Revision of Article. — Session Laws 1969, c. 869, s. 8, rewrote this article, which formerly consisted of six sections, to appear as the present four sections. No attempt has been made to point out the changes made, but where appropriate the historical citations to the former sections have been added to the sections of the revised article.

Editor's Note.—For case law survey as to searches and seizures, see 45 N.C.L. Rev. 931 (1967).

For article on "An Inquiry into Mapp v. Ohio in North Carolina," see 45 N.C.L. Rev. 119 (1966).

§§ 15-25.1, 15-25.2: Repealed by Session Laws 1969, c. 869, s. 8.

§ 15-26. Contents of search warrant.—(a) The search warrant must describe with reasonable certainty the person, premises, or other place to be searched and the contraband, instrumentality, or evidence for which the search is to be made.

(b) An affidavit signed under oath or affirmation by the affiant or affiants and indicating the basis for the finding of probable cause must be a part of or attached to the warrant.

(c) The warrant must be signed by the issuing official and bear the date and hour of its issuance above his signature. (1868-9, c. 178, subc. 3, s. 39; Code, s. 1172; Rev., s. 3164; C. S., s. 4530; 1961, c. 1069; 1969, c. 869, s. 8.)

§ 15-27. Exclusionary rule.—(a) No evidence obtained or facts discovered by means of an illegal search shall be competent as evidence in any trial.

(b) No search may be regarded as illegal solely because of technical deviations in a search warrant from requirements not constitutionally required. (1969, c. 869, s. 8.)

§ 15-27.1. Application of article to all search warrants; exception as to inspection warrants.—The requirements of this article apply to search

warrants issued for any purpose, including those issued pursuant to § 18-13, except that the contents of and procedure relating to inspection warrants authorized under article 4A of this chapter and § 14-288.11 are to be governed by the provisions set out in the sections relating to them. (1957, c. 496; 1969, c. 869, s. 8.)

ARTICLE 4A.

Administrative Search and Inspection Warrants.

§ 15-27.2. Warrants to conduct inspections authorized by law.—

(a) Notwithstanding the provisions of article 4 of this chapter, any official or employee of the State or of a unit of county or local government of North Carolina may, under the conditions specified in this section, obtain a warrant authorizing him to conduct a search or inspection of property if such a search or inspection is one that is elsewhere authorized by law, either with or without the consent of the person whose privacy would be thereby invaded, and is one for which such a warrant is constitutionally required.

(b) The warrant may be issued by any magistrate of the general court of justice, judge, clerk, or assistant or deputy clerk of any court of record whose territorial jurisdiction encompasses the property to be inspected.

(c) The issuing officer shall issue the warrant when he is satisfied the following conditions are met:

- (1) The one seeking the warrant must establish under oath or affirmation that the property to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection which naturally includes that property, or that there is probable cause for believing that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property;
- (2) An affidavit indicating the basis for the establishment of one of the grounds described in (1) above must be signed under oath or affirmation by the affiant;
- (3) The issuing official must examine the affiant under oath or affirmation to verify the accuracy of the matters indicated by the statement in the affidavit;

(d) The warrant shall be validly issued only if it meets the following requirements:

- (1) It must be signed by the issuing official and must bear the date and hour of its issuance above his signature with a notation that the warrant is valid for only 24 hours following its issuance;
- (2) It must describe, either directly or by reference to the affidavit, the property where the search or inspection is to occur and be accurate enough in description so that the executor of the warrant and the owner or the possessor of the property can reasonably determine from it what person or property the warrant authorizes an inspection of;
- (3) It must indicate the conditions, objects, activities or circumstances which the inspection is intended to check or reveal;
- (4) It must be attached to the affidavit required to be made in order to obtain the warrant.

(e) Any warrant issued under this section for a search or inspection shall be valid for only 24 hours after its issuance, must be personally served upon the owner or possessor of the property between the hours of 8:00 A.M. and 8:00 P.M. and must be returned within 48 hours.

(f) No facts discovered or evidence obtained in a search or inspection conducted under authority of a warrant issued under this section shall be competent as evidence in any civil, criminal or administrative action, nor considered in imposing any civil, criminal, or administrative sanction against any person, nor

as a basis for further seeking to obtain any warrant, if the warrant is invalid or if what is discovered or obtained is not a condition, object, activity or circumstance which it was the legal purpose of the search or inspection to discover; but this shall not prevent any such facts or evidence to be so used when the warrant issued is not constitutionally required in those circumstances.

(g) The warrants authorized under this section shall not be regarded as search warrants for the purposes of application of article 4 of chapter 15 of the General Statutes of North Carolina. (1967, c. 1260.)

Editor's Note. — For comment as to inspections, see 4 Wake Forest Intra. L. warrants required for administrative health Rev. 117 (1968).

ARTICLE 5.

Peace Warrants.

§ 15-28. Officers authorized to issue peace warrants.

Cited in State v. Matthews, 270 N.C. 35, 153 S.E.2d 791 (1967).

ARTICLE 6.

Arrest.

§ 15-41. When officer may arrest without warrant.

An arrest without warrant except as authorized by statute is illegal. State v. Moore, 275 N.C. 141, 166 S.E.2d 53 (1969).

An illegal arrest, unaccompanied by violent or oppressive circumstances, would not be more coercive than a legal arrest. State v. Faulkner, 5 N.C. App. 113, 168 S.E.2d 9 (1969).

Every statement made by a person in custody as a result of an illegal arrest is not *ipso facto* involuntary and inadmissible, but the facts and circumstances surrounding such arrest and the in-custody statement should be considered in determining whether the statement is voluntary and admissible. Voluntariness remains as the test of admissibility. State v. Faulkner, 5 N.C. App. 113, 168 S.E.2d 9 (1969).

A formal declaration of arrest by the officer is not a prerequisite to the making of an arrest. State v. Tippett, 270 N.C. 588, 155 S.E.2d 269 (1967).

Violation of Motor Vehicle Act. — An officer has a right to make an arrest without a warrant if a violation of the Motor Vehicle Act is actually committed in his presence. State v. McCaskill, 270 N.C. 788, 154 S.E.2d 907 (1967).

If the officer saw the commission of a violation of the Motor Vehicle Act, a misdemeanor, he would have the right to enter the premises where the defendant lived in order to make an arrest without a warrant. State v. McCaskill, 270 N.C. 788, 154 S.E.2d 907 (1967).

Driving Motor Vehicle While under In-

fluence of Intoxicants. — A highway patrolman apprehending a person driving a motor vehicle on the public highway while under the influence of intoxicating liquor is authorized, by virtue of the provisions of § 20-188 and subdivision (1) of this section, to arrest such person without a warrant, and such arrest is legal. State v. Broome, 269 N.C. 661, 153 S.E.2d 384 (1967).

Where an officer sees a person intoxicated at a public bar, the officer may arrest such person without a warrant for violation of § 14-335. State v. Shirlen, 269 N.C. 695, 153 S.E.2d 364 (1967).

When police officers stopped an automobile fitting the description of one used in conjunction with a robbery and observed a pistol on the seat of the automobile, they had reasonable ground to believe that defendant had committed a felony and would evade arrest if not taken into custody. State v. Bell, 270 N.C. 25, 153 S.E.2d 741 (1967).

Information Sufficient to Authorize Arrest. — Where arresting officer knew that a robbery had been committed by one who had fled and had a general description of the felon, of his checkered pants, and of the cut on the rear of his right leg, and defendant was found at the location described in the officer's information and had property on his person similar to that taken in the robbery, such information in possession of the officers was amply sufficient to authorize the arrest without a warrant. State v. Grier, 268 N.C. 296, 150 S.E.2d 443 (1966).

Where a police officer who had been informed of a felony committed by a barefooted white man, wearing coveralls, was looking for such a man and at about 3 A.M. he found the defendant, who answered the description, hiding behind a bush two blocks from the scene of the crime, it was lawful for him to arrest the defendant without a warrant. *State v. Tippett*, 270 N.C. 588, 155 S.E.2d 269 (1967).

§ 15-44. When officer may break and enter houses.

Compliance with the requirement that admittance be "demanded and denied" serves to identify the official status of those seeking admittance. The requirement is for the protection of the officers as well as for the protection of the occupant and the recognition of his constitutional rights. *State v. Covington*, 273 N.C. 690, 161 S.E.2d 140 (1968).

Applied in *Hamilton v. North Carolina*, 260 F. Supp. 632 (E.D.N.C. 1966); *State v. Covington*, 273 N.C. 690, 161 S.E.2d 140 (1968).

Cited in *State v. Peele*, 274 N.C. 106, 161 S.E.2d 568 (1968); *State v. Howard*, 274 N.C. 186, 162 S.E.2d 495 (1968).

§ 15-46. Procedure on arrest without warrant.

Editor's Note.—For comment on admissibility of confessions, see 43 N.C.L. Rev. 972 (1965).

Section does not prescribe mandatory procedures affecting validity of trial. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966); *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

It is not an essential of jurisdiction that a warrant be issued prior to the arrest and that defendant be initially arrested thereunder. *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

§ 15-47. Arresting officer to inform offender of charge, allow bail except in capital cases, and permit communication with counsel or friends.—Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this State, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, except in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied. Provided that in no event shall the prisoner be kept in custody for a longer period than twelve hours without a warrant. In the event the arresting officer fails to have bail fixed as required by this section, the custodian of the person arrested shall have bail fixed in a reasonable sum, and take bail as authorized in G.S. 15-108.

Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1937, c. 257, ss. 1, 2; 1955, c. 889; 1969, c. 296.)

Editor's Note.—

The 1969 amendment added the last sentence of the first paragraph.

This section, etc.—

This section does not prescribe mandatory procedures affecting the validity of a

trial. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

Applied in *State v. Hines*, 266 N.C. 1, 145 S.E.2d 363 (1965); *Griffin v. Ross*, 259 F. Supp. 594 (E.D.N.C. 1966).

ARTICLE 7.

Fugitives from Justice.

§ 15-48. Outlawry for felony.—In all cases where any two justices of the peace, or any justice or judge of the General Court of Justice, or any judge of a criminal court shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of the law, the judge, or the two justices, being justices of the county wherein such person is supposed to lurk or conceal himself, are hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also, when issued by any judge, empowering and requiring the sheriff of any county in the State in which such fugitive shall be, and when issued by two justices, empowering and requiring the sheriff of the county of the justices, to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the judge or justices shall direct; and if any person against whom proclamation has been thus issued, continued to stay out, lurk and conceal himself, and do not immediately surrender himself, any citizen of the State may capture, arrest and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation or impeachment of any crime. (1866, c. 62; 1868-9, c. 178, subc. 1, s. 8; Code, s. 1131; Rev., s. 3183; C. S., s. 4549; 1969, c. 44, s. 30.)

Editor's Note.—

The 1969 amendment substituted "justice or judge of the General Court of Justice, or any judge of a criminal court" for

"judge of the Supreme, superior, or criminal courts" near the beginning of the section.

§ 15-49. Fugitives from another state arrested.—Any justice, judge, or magistrate of the General Court of Justice, or any judge of a criminal court, or any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, on satisfactory information laid before him that any fugitive or other person in the State has committed, out of the State and within the United States, any offense which, by law of the state in which the offense was committed, is punishable either capitally or by imprisonment for one year or upwards in any state prison, has full power and authority, and is hereby required, to issue a warrant for such fugitive or other person and commit him to any jail within the State for the space of six months, unless sooner demanded by the public authorities of the state wherein the offense may have been committed, pursuant to the act of Congress in that case made and provided. If no demand be made within that time the fugitive or other person shall be liberated, unless sufficient cause be shown to the contrary. (1868-9, c. 178, subc. 3, s. 34; Code, s. 1165; 1895, c. 103; Rev., s. 3184; C. S., s. 4550; 1969, c. 44, s. 31.)

Editor's Note.—

The 1969 amendment substituted "Any justice, judge, or magistrate of the General Court of Justice, or any judge of a crimi-

nal court" for "Any justice of the Supreme Court, or any judge of the superior court or of any criminal court" at the beginning of the section.

§ 15-53. Governor may employ agents, and offer rewards. — The Governor, on information made to him of any person, whether the name of such person be known or unknown, having committed a felony or other infamous crime within the State, and of having fled out of the jurisdiction thereof, or who conceals himself within the State to avoid arrest, or who, having been convicted, has

escaped and cannot otherwise be apprehended, may either employ a special agent, with a sufficient escort, to pursue and apprehend such fugitive, or issue his proclamation, and therein offer a reward, not exceeding ten thousand dollars, according to the nature of the case, as in his opinion may be sufficient for the purpose, to be paid to him who shall apprehend and deliver the fugitive to such person and at such place as in the proclamation shall be directed. (1800, c. 561, P. R.; R. C., c. 35, s. 4; 1866, c. 28; 1868-9, c. 52; 1870-1, c. 15; 1871-2, c. 29; Code, s. 1169; 1891, c. 421; Rev., s. 3188; C. S., s. 4554; 1925, c. 275, s. 6; 1967, c. 165, s. 1.)

Editor's Note.—

The 1967 amendment increased the max-

imum reward from four hundred dollars to ten thousand dollars.

§ 15-53.1. Governor may offer rewards for information leading to arrest and conviction.—When it shall appear to the Governor, upon satisfactory information furnished to him, that a felony or other infamous crime has been committed within the State, whether the name or names of the person or persons suspected of committing the said crime be known or unknown, the Governor may issue his proclamation and therein offer an award not exceeding ten thousand dollars (\$10,000), according to the nature of the case as, in his opinion, may be sufficient for the purpose, to be paid to him who shall provide information leading to the arrest and conviction of such person or persons. The proclamation shall be upon such terms as the Governor may deem proper, but it shall identify the felony or felonies and the authority to whom the information is to be delivered and shall state such other terms as the Governor may require under which the reward is payable. (1967, c. 165, s. 2.)

ARTICLE 8.

Extradition.

§ 15-55. Definitions.

Cited in Pitts v. North Carolina, 267 F. Supp. 870 (M.D.N.C. 1967).

§ 15-59. Extradition of persons imprisoned or awaiting trial in an other state or who have left the demanding state under compulsion.

Quoted in Pitts v. North Carolina, 395 F.2d 182 (4th Cir. 1968). Cited in Pitts v. North Carolina, 267 F. Supp. 870 (M.D.N.C. 1967).

§ 15-77. Application for issuance of requisition; by whom made; contents.

Cited in Pitts v. North Carolina, 267 F. Supp. 870 (M.D.N.C. 1967).

ARTICLE 9.

Preliminary Examination.

§ 15-85. Waiver of examination.—If any person arrested desires to waive examination and give bail, it is the duty of the officer making the arrest to take him before any magistrate of the county in which the offense is charged to have been committed, or before any justice or judge of the General Court of Justice. (1868-9, c. 178, subc. 3, ss. 7, 8; Code, ss. 1138, 1139; Rev., s. 3190; C. S., s. 4557; 1969, c. 44, s. 32.)

Editor's Note.—The 1969 amendment substituted "justice or judge of the General Court of Justice" for "judge of the Supreme or superior court" at the end of the section.

One of the principal functions of the

preliminary hearing is to inquire into the validity of the arrest and restraint of a person charged with the commission of a crime by bringing him before a magistrate to determine whether an offense has been committed and whether there is probable

cause to believe that the prisoner is the offender. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

A preliminary, etc.—

In accord with 1st paragraph in original. See *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967), quoting *State v. Hackney*, 240 N.C. 230, 81 S.E.2d 778 (1954).

A preliminary hearing is not a critical stage of the proceeding. *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967).

A preliminary hearing is not an arraignment. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

There is no provision in the North Carolina Constitution or United States Constitution requiring a preliminary hearing. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

The general rule in the United States is that in absence of a statute, a preliminary hearing is not a prerequisite or an indispensable step in the prosecution of a person accused with crime, and an accused person is not entitled to a preliminary hearing as a matter of substantive right. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

Nor is it a trial. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

It is merely a course of procedure whereby a possible abuse of power may be prevented. *Carroll v. Turner*, 262 F. Supp. 486 (E.D.N.C. 1966).

Denial of defendant's request for counsel at the preliminary hearing does not deprive defendant of any constitutional right. *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967).

A defendant may waive the preliminary hearing and consent to be bound over to the superior court to await grand jury action without forfeiting any defense or right available to him. *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967).

It has been the practice in this State for generations that a defendant can waive a preliminary examination and be bound over to the superior court. *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967).

Waiver without Benefit of Counsel.— The contention that the defendant's constitutional right was violated when he was permitted to waive the preliminary hearing without the benefit of counsel presents no prejudicial error that would justify disturbing the result of the trial where the defendant was furnished with court-appointed counsel to represent him at his trial in the superior court and, when the hearing was waived, no plea was entered. *State v. Casdon*, 267 N.C. 316, 148 S.E.2d 137 (1966).

The hearing of probable cause before a committing magistrate or inferior judge can be readily dispensed with by the State in this jurisdiction since a preliminary hearing is not an essential prerequisite to the finding of an indictment. *Gasque v. State*, 271 N.C. 323, 156 S.E.2d 740 (1967).

ARTICLE 10.

Bail.

§ 15-102. Officers authorized to take bail, before imprisonment.— Officers before whom persons charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to fix and take bail as follows:

- (1) Any justice or judge of the General Court of Justice, in all cases.
- (2) Any clerk of the superior court, any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest, in all cases of misdemeanor, and in all cases of felony not capital. (1868-9, c. 178, subc. 3, s. 29; 1871-2, c. 37; Code, s. 1160; Rev. s. 3209; C. S., s. 4574; 1951, c. 85; 1963, c. 1099, s. 1; 1969, c. 44, s. 33.)

Editor's Note.—

The 1969 amendment substituted "Any justice or judge of the General Court of Justice" for "Any justice of the Supreme Court, or a judge of a superior court" in subdivision (1).

For comment on bail in North Carolina, see 5 *Wake Forest Intra. L. Rev.* 300 (1969).

§ 15-103. Officers authorized to take bail, after imprisonment.— Any justice or judge of the General Court of Justice has power to fix and take bail for persons committed to prison charged with crime in all cases; any justice

of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest has the same power in all cases where the punishment is not capital. (1868-9, c. 178, subc. 3, s. 30; Code, s. 1161; Rev., s. 3210; C. S., s. 4575; 1963, c. 1099, s. 2; 1969, c. 44, s. 34.)

Editor's Note.—

The 1969 amendment substituted "Any justice of the Supreme Court or any judge of a superior court" at justice or judge of the General Court of the beginning of the section.

§ 15-103.1. Release prior to trial or hearing other than on bail.—

(a) Except as otherwise provided in this section, every officer authorized to fix and take bail in any situation is empowered in his discretion to release from custody, pending trial or hearing, any person charged with a noncapital felony or a misdemeanor, upon such person's own recognizance or upon the execution of an unsecured appearance bond in an amount specified by the officer.

(b) Every person in custody pending trial as a defendant in a criminal case, other than a person charged with a capital felony, may be released other than upon bail if it appears likely that he will appear and surrender himself to the jurisdiction of the court at the proper time. The officer authorized to fix and take bail in any case may cause an investigation to be made into the background of the defendant and to require him to provide under oath a statement of his circumstances with respect to residence, employment, and family situation whereupon the officer may make a finding upon which to base the decision as to whether or not to allow the defendant's release on recognizance or unsecured appearance bond. The officer is further authorized to set such terms and conditions as reasonably appear to him to be required to insure the appearance of the defendant. In determining which conditions of release will reasonably assure appearance, the officer shall, on the basis of available information and without having to conform to the rules of evidence, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. The officer is further empowered to cause the arrest and recommitment of the accused if he has reasonable grounds to believe that the accused is about to depart the jurisdiction or for other reason may fail to appear or if the defendant has violated any condition of release.

(c) Every person released from custody under this section who wilfully fails to appear for trial or hearing, or knowingly violates any condition of his release, shall be guilty of a misdemeanor.

(d) For the purposes of payment of expenses of extradition under the provisions of the Uniform Criminal Extradition Act every person who becomes a fugitive from justice during a period of release under this section, other than on bail, shall be deemed a felon.

The term "officer" when used herein shall mean and include any officer or official authorized to fix and take bail under the provisions of article 10 of chapter 15 of the General Statutes of North Carolina.

Nothing in this section shall be construed as requiring any person accused to be released without bail. (1967, c. 1041.)

Editor's Note.—The act adding this section became effective July 1, 1967. see 5 Wake Forest Intra. L. Rev. 300 (1969).

For comment on bail in North Carolina,

§ 15-103.2. Chief judges to issue policies.—The Chief Judge of the District Court Division of the General Court of Justice of each district shall devise and issue recommended policies which may be followed on the use of bail and the

amounts thereof; the use of release on a person's own recognizance, and the use of unsecured appearance bonds and the amounts thereof. (1969, c. 1062, s. 2.)

Editor's Note. — Session Laws 1969, c. 1062, s. 4, makes the act effective July 1, 1969.

ARTICLE 11.

Forfeiture of Bail.

§ 15 110. In recognizance to keep the peace.

Recognizance Binds to Three Things.—

In accord with original. See State v. Mallory, 266 N.C. 31, 145 S.E.2d 335 (1965).

§ 15-113. Notice of judgment nisi before execution.

Editor's Note. —

Quoted in State v. Mallory, 266 N.C.

For comment on bail in North Carolina, see 5 Wake Forest Intra. L. Rev. 300 (1969).

§ 15-116. Judges may remit forfeited recognizances. — The judges of the superior and district courts may hear and determine the petition of all persons who shall conceive they merit relief on their recognizances forfeited; and may lessen, or absolutely remit, the same, and do all and anything therein as they shall deem just and right and consistent with the welfare of the State and the persons praying such relief, as well before as after final judgment entered and execution awarded. (1788, c. 292, s. 1, P. R.; R. C., c. 35, s. 38; Code, s. 1205; Rev., s. 3220; C. S., s. 4588; 1969, c. 1190, s. 51½.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, inserted "and district" near the beginning of the section.

For comment on bail in North Carolina, see 5 Wake Forest Intra. L. Rev. 300 (1969).

§ 15-122. Right of bail to surrender principal. — The bail shall have liberty, at any time before execution awarded against him, to surrender to the court from which the process issued, or to the sheriff having such process to return, during the session, or in the recess of such court, the principal, in discharge of himself; and such bail shall, at any time before such execution awarded, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity to surrender him to the sheriff or court as aforesaid; and the sheriff is hereby required to receive such surrender, and hold the body of the defendant in custody as if bail had never been given: Provided, that in criminal proceedings the surrender by the bail, after the recognizance has been forfeited, shall not have the effect to discharge the bail, but the forfeiture may be remitted in the manner provided for. Provided, further, that if the defendant is in legal custody or imprisoned in the State of North Carolina or in any other state or territory of the United States at the time such defendant is bonded to appear in court, then the hearing on the writ of scire facias shall be continued for not less than ninety (90) days in order to give the surety an opportunity to produce the defendant.

If upon conviction of the principal, the court shall continue prayer for judgment, impose a sentence suspended upon condition that the principal perform or refrain from performing any act, suspend sentence and place the principal on probation, or impose any other judgment or sentence which subjects the principal to the continued jurisdiction and supervision of the court, the surety may surrender the principal to the court and shall thereupon be released from all obligation under the recognizance. Upon surrender of the principal in such instance, the principal may give new bail as provided in G.S. 15-123 for the faithful performance of the

conditions of the judgment or sentence. (1777, c. 115, s. 20, P. R.; 1848, c. 7; R. C., c. 11, s. 5; Code, s. 1230; Rev., s. 3226; C. S., s. 4594; 1955, c. 873; 1969, c. 1005.)

Editor's Note. — The 1969 amendment added the second paragraph.

For comment on bail in North Carolina, see 5 Wake Forest Intra. L. Rev. 300 (1969).

Quoted in State v. Mallory, 266 N.C. 31, 145 S.E.2d 335 (1965).

ARTICLE 13.

Venue.

§ 15-134. Improper venue met by plea in abatement; procedure.

Purpose of Section.—

The mischief intended to be remedied by this section was the difficulty encountered by the court in effecting the conviction of persons who had violated the criminal law of the state where the offense was committed near the boundaries of counties which were undetermined or unknown. And it often happened that, where the boundaries were established and known, it was uncertain from the proof whether the offense was committed on the one or the other side of the line, and, in consequence of the uncertainty and the doubt arising

from it, offenders went "unwhipped of justice." This was the evil intended to be remedied. State v. Overman, 269 N.C. 453, 153 S.E.2d 44 (1967).

Burden of Proof. — This section does not state which party has the burden of proof if a plea in abatement is filed. At common law, the burden of proof was upon the State to prove that the offense occurred in the county named in the bill of indictment. State v. Overman, 269 N.C. 453, 153 S.E.2d 44 (1967).

Applied in State v. Midyette, 270 N.C. 229, 154 S.E.2d 66 (1967).

ARTICLE 14.

Presentment.

§ 15-137. No arrest or trial on presentment.

There can be no trial, conviction, or punishment for a crime without a formal and sufficient accusation. In the absence of an accusation the court acquires no jurisdiction whatever, and if it assumes jurisdiction a trial and conviction are a nullity. McClure v. State, 267 N.C. 212, 148 S.E.2d 15 (1966).

When the court sentenced petitioner, who had been indicted for a violation of § 14-26 (carnal knowledge of female virgins between twelve and sixteen years of age), to imprisonment for a term of not less than twelve nor more than fifteen years upon his plea of guilty to a violation of §

14-22 (assault with intent to commit rape) when there was no formal and sufficient accusation against him for the offense to which he pleaded guilty, it would seem to be without precedent, and the sentence of imprisonment was a nullity, and violates petitioner's rights as guaranteed by N.C. Const., Art. I, § 17, and by § 1 of the 14th Amendment to the United States Constitution and must be vacated in post-conviction proceedings. McClure v. State, 267 N.C. 212, 148 S.E.2d 15 (1966).

Cited in State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

ARTICLE 15.

Indictment.

§ 15-140. Waiver of indictment in misdemeanor cases.

The requirements for a waiver of indictment and for trial upon an information signed by the solicitor are the same as in noncapital felony cases, where the defendant

pleads not guilty to a misdemeanor. State v. Bethea, 272 N.C. 521, 158 S.E.2d 591 (1968).

§ 15-140.1. Waiver of indictment in noncapital felony cases.

Failure of Solicitor to Sign Statement of Accusation.—This section contemplates that the prosecution shall be upon an in-

formation signed by the solicitor, and the failure of the solicitor to sign the statement of accusation to which defendant

pled guilty renders the plea void. *State v. Bethea*, 272 N.C. 521, 158 S.E.2d 591 (1968).

Use of Warrant in Lieu of Information Expressly Disapproved.—The practice of the solicitor in attempting to use a warrant in lieu of an information as required by this section is expressly disapproved by the Supreme Court. *State v. Bethea*, 272 N.C. 521, 158 S.E.2d 591 (1968).

Waiver of Finding Includes Waiver of Return.—The waiver of the finding of a

bill of indictment also includes the waiver of the return. *State v. Hodge*, 267 N.C. 238, 147 S.E.2d 881 (1966).

New Indictment Not Required for Lesser Included Offense.—It is not necessary that accused be tried under a new indictment charging him with assault with intent to commit rape, since assault with intent to commit rape is a lesser included offense of rape and accused therefore could be tried on the original indictment. *Godlock v. Ross*, 259 F. Supp. 659 (E.D.N.C. 1966).

§ 15-141. Bills returned by foreman except in capital cases.

Minutes of Court as Evidence of Compliance.—The minutes of the court show that the requirements of this section as to return of an indictment in a capital case in open court were strictly complied with. *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967).

Defendant is not entitled to be present in court, either in person or by his attorney,

when the indictments are returned as true bills by the grand jury, and his motion to quash the indictments because neither he nor his attorney was present in court when the indictments were returned was properly overruled. *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967), citing *State v. Stanley*, 227 N.C. 650, 44 S.E.2d 196 (1947).

§ 15-143. Bill of particulars.

When Section Applies.—

In accord with original. See *State v. Ingram*, 271 N.C. 538, 157 S.E.2d 119 (1967).

This section does not cure a defect in the bill of indictment. *State v. Ingram*, 271 N.C. 538, 157 S.E.2d 119 (1967).

The function of a bill, etc.—

The function of a bill of particulars is (1) to inform the defense of the specific occurrences intended to be investigated on the trial, and (2) to limit the course of the evidence to the particular scope of inquiry. *State v. Overman*, 269 N.C. 453, 153 S.E.2d 44 (1967); *State v. Spence*, 271 N.C. 23, 155 S.E.2d 802 (1967).

The function of a bill of particulars is to inform the defendant of the nature of the evidence which the State proposes to offer. *State v. Overman*, 269 N.C. 453, 153 S.E.2d 44 (1967).

The "particulars" authorized are not, etc.—

A bill of particulars is not a part of the indictment, nor a substitute therefor, nor an amendment thereto. *State v. Overman*, 269 N.C. 453, 153 S.E.2d 44 (1967).

§ 15-144. Essentials of bill for homicide.

Hearsay Testimony of Qualified Witness.—Indictment will not be quashed on the ground that some of the testimony of the qualified witness heard by the grand jury may have been hearsay and incompetent. *State v. Cade*, 268 N.C. 438, 150 S.E.2d 756 (1966).

Applied in *State v. Davis*, 266 N.C. 633, 146 S.E.2d 646 (1966); *State v. White*, 271 N.C. 391, 156 S.E.2d 721 (1967); *State v. Godwin*, 271 N.C. 571, 157 S.E.2d 6 (1967).

Cited in *State v. Swann*, 272 N.C. 215, 158 S.E.2d 80 (1967).

§ 15-147. Former conviction alleged in bill for second offense.

Editor's Note.—For note on "Constitutional Law—Current Trends in Recidivist Statute Procedures," see 45 N.C.L. Rev. 1039 (1967).

In General.—

Where a person is charged in a bill of indictment with an offense which, on conviction thereof, is punishable with a greater penalty than on the first conviction and the indictment properly alleges a prior conviction, this section provides that a transcript of the record of the first conviction, duly certified, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first

conviction. *State v. Walls*, 4 N.C. App. 661, 167 S.E.2d 547 (1969).

The words "third offense" are not sufficient.—The words "third offense," even if included in the body of the indictment, are not sufficient to charge the offense of felonious escape. *State v. Bennett*, 271 N.C. 423, 156 S.E.2d 725 (1967).

In addition, etc.—

It is necessary also to allege in the indictment facts showing that at a certain time and place the defendant was convicted of the previous offense or offenses. *State v. Bennett*, 271 N.C. 423, 156 S.E.2d 725 (1967).

§ 15-148. Manner of alleging joint ownership of property.

Quoted in *State v. Gallimore*, 272 N.C. 528, 158 S.E.2d 505 (1968).

§ 15-152. Separate counts; consolidation.

In General.—

In accord with original. See *State v. Parker*, 271 N.C. 414, 156 S.E.2d 677 (1967); *State v. Conrad*, 4 N.C. App. 50, 165 S.E.2d 771 (1969); *State v. Mourning*, 4 N.C. App. 569, 167 S.E.2d 501 (1969).

The trial court is authorized by this section to order that prosecutions of several defendants for offenses growing out of the same transaction be consolidated for trial. *State v. Mourning*, 4 N.C. App. 569, 167 S.E.2d 501 (1969).

Consolidation Is within, etc.—

An order consolidating cases for trial is discretionary. *State v. Conrad*, 4 N.C. App. 50, 165 S.E.2d 771 (1969).

The motion by the State to consolidate four cases for trial and the opposing motion by the defendants for separate trials were addressed to the sound discretion of the presiding judge. *State v. Yoes*, 271 N.C. 616, 157 S.E.2d 386 (1967).

Consolidation of Minor Offense and Capital Charge.—Ordinarily, unless the evidence showing guilt of a minor offense fits into the proof on the capital charge, the minor offenses should not be included. *State v. Old*, 272 N.C. 42, 157 S.E.2d 651 (1967).

Indictments charging defendants as accessories before the fact in the slaying of the same person, the defendants being present together at the time of the offense, held to authorize the consolidation of the indictments for trial. *State v. Parker*, 271 N.C. 414, 156 S.E.2d 677 (1967).

Transactions Occurring on Same Evening in Close Proximity.—Where two warrants and an indictment were consolidated for trial, there was no denial of petitioner's

constitutional rights, since all the charges grew out of transactions occurring on the same evening in close proximity to each other. *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

Burglary and Larceny.—An indictment charged two offenses, (1) burglary in the first degree, and (2) larceny of money from the building allegedly feloniously broken into and entered, as alleged in the first count, but the bill was not defective. These two counts, by virtue of this section, may be joined in one indictment in separate counts. *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967).

Felonious Entry, Kidnapping, and Forceable Taking of Automobile.—The felonious entry into a dwelling house, the kidnapping of one of the occupants of the house, and the forcible taking of an automobile in which the perpetrators attempted to make their getaway were so connected and tied together as to make the three offenses one continuous criminal episode. The evidence of the whole affair was pertinent and necessary to establish the identity of the accused as one of the guilty parties. The three charges were properly consolidated and tried together. *State v. Arsal*, 269 N.C. 184, 152 S.E.2d 99 (1967).

Larceny and receiving may be included in the same indictment, even though the charges are inconsistent and a defendant cannot be guilty of both. *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

When a defendant pleads guilty to the indictment, and a single judgment is pronounced thereon, it is regarded as immaterial whether the judgment is considered

as relating to the larceny count or to the receiving count. It is only when there is some defect in either the larceny count or the receiving count that knowledge of which count the defendant is pleading guilty to is required. *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

Rape and Kidnapping.—The consolidation of indictments, charging defendant

with rape and kidnapping based upon a single occurrence, rests within the discretionary power of the trial court. *State v. Turner*, 268 N.C. 225, 150 S.E.2d 406 (1966).

Applied in *State v. Vandiver*, 265 N.C. 325, 144 S.E.2d 54 (1965); *State v. Craddock*, 272 N.C. 160, 158 S.E.2d 25 (1967).

§ 15-153. Bill or warrant not quashed for informality.

I. NATURE AND PURPOSE.

Purpose, etc.—

The purpose of the warrant or indictment is (1) to give the defendant notice of the charge against him to the end that he may prepare his defense and to be in a position to plead former acquittal or former conviction in the event he is again brought to trial for the same offense; (2) to enable the court to know what judgment to pronounce in case of conviction. *State v. Dorsett*, 272 N.C. 227, 158 S.E.2d 15 (1967).

Quashing, etc.—

Quashing of indictments and warrants is not favored. *State v. Abernathy*, 265 N.C. 724, 145 S.E.2d 2 (1965).

Applied in *State v. Bowden*, 272 N.C. 481, 158 S.E.2d 493 (1968).

Cited in *State v. Greenlee*, 272 N.C. 651, 159 S.E.2d 22 (1968).

II. GENERAL EFFECT.

This section does not dispense, etc.—

In accord with original. See *State v. Guffey*, 265 N.C. 331, 144 S.E.2d 14 (1965).

It is an essential of jurisdiction that a criminal offense shall be sufficiently charged in the indictment. *State v. Guffey*, 265 N.C. 331, 144 S.E.2d 14 (1965).

A charge in a bill of indictment must be complete in itself, and contain all of the material allegations which constitute the offense charged. *State v. Guffey*, 265 N.C. 331, 144 S.E.2d 14 (1965).

In order to constitute a valid charge under a statute, the essential elements of the offense must be set forth in the warrant. *State v. Williams*, 1 N.C. App. 312, 161 S.E.2d 198 (1968).

Where a warrant does not charge that defendant operated a motor vehicle on a public highway, such warrant fails to allege an essential element of the offense as defined in § 20-28 (a). *State v. Cook*, 272 N.C. 728, 158 S.E.2d 820 (1968).

A warrant charging that defendant did "unlawfully and wilfully appear off of his premises in a drunken condition" is insufficient to charge the offense of public drunkenness proscribed by § 14-335, since

it fails to charge that defendant was in a public place. *State v. Williams*, 1 N.C. App. 312, 161 S.E.2d 198 (1968).

Plain, Intelligible and Explicit, etc.—

In accord with 3rd paragraph in original. See *State v. Hunt*, 265 N.C. 714, 144 S.E.2d 890 (1965); *Godlock v. Ross*, 259 F. Supp. 659 (E.D.N.C. 1966); *State v. Pinyatello*, 272 N.C. 312, 158 S.E.2d 596 (1968); *State v. Clontz*, 4 N.C. App. 667, 167 S.E.2d 520 (1969).

In accord with 4th paragraph in original. See *State v. Lackey*, 271 N.C. 171, 155 S.E.2d 465 (1967); *State v. Cook*, 272 N.C. 728, 158 S.E.2d 820 (1968).

Merely charging, etc.—

In accord with original. See *State v. Cook*, 272 N.C. 728, 158 S.E.2d 820 (1968).

A warrant and the affidavit upon which it is based will be construed together and will be tested by rules less strict than those applicable to indictments, but, nevertheless, the warrant and the affidavit together must charge facts sufficient to constitute an offense. *State v. Williams*, 1 N.C. App. 312, 161 S.E.2d 198 (1968).

A warrant must contain directly or by proper reference at least a defective statement of the crime charged. *State v. Williams*, 1 N.C. App. 312, 161 S.E.2d 198 (1968).

Fatal Defect Cannot Be Cured by Amendment.—Where a warrant or indictment is fatally defective in failing to charge an essential element of the offense, the defect cannot be cured by amendment. *State v. Williams*, 1 N.C. App. 312, 161 S.E.2d 198 (1968).

An indictment for an offense, etc.—

In a criminal prosecution for a statutory offense, including the violation of a municipal ordinance, the warrant or indictment is sufficient if and when it follows the language of the statute or ordinance and thereby charges the essentials of the offense "in a plain, intelligible, and explicit manner." If the words of the statute fail to do this they must be supplemented by other allegations which so plainly, intelligibly and explicitly set forth

every essential element of the offense as to leave no doubt in the mind of the accused and the court as to the offense intended to be charged. *State v. Dorsett*, 272 N.C. 227, 158 S.E.2d 15 (1967).

It is not necessary that the indictment refer to a particular statute. *Godlock v. Ross*, 259 F. Supp. 659 (E.D.N.C. 1966).

§ 15-155. Defects which do not vitiate.

Quoted in *State v. Lilley*, 3 N.C. App. 276, 164 S.E.2d 498 (1968).

Cited in *Klopfer v. North Carolina*, 368

Reference to a specific statute, upon which the charge in a warrant or bill of indictment is laid, is not necessary to its validity. *State v. Hunt*, 265 N.C. 714, 144 S.E.2d 890 (1965).

Cited in *Klopfer v. North Carolina*, 368 U.S. 213, 87 Sup. Ct. 226, 17 L. Ed. 2d 141 (1967); *State v. Greenlee*, 272 N.C. 651, 159 S.E.2d 22 (1968).

ARTICLE 15B.

Pre-Trial Examination of Witnesses and Exhibits of the State.

§ 15-155.4. In general.—In all criminal cases before the superior court, the superior court judge assigned to hold the courts of the district wherein the case is pending, or the resident superior court judge of the district, shall for good cause shown, direct the solicitor or other counsel for the State to produce for inspection, examination, copying and testing by the accused or his counsel any specifically identified exhibits to be used in the trial of the case sufficiently in advance of the trial to permit the accused to prepare his defense; and such judge shall for good cause shown and regardless of any objection of the solicitor or other counsel for the State, direct that the accused or his counsel be permitted to examine before any clerk of superior court, or any other person designated by the judge for the purpose, any expert witnesses to be offered by the State in the trial of the case regarding the proposed testimony of such expert witnesses.

Prior to issuance of any order for the inspecting, examining, copying or testing of any exhibit or the examination of any expert witness under this section the accused or his counsel shall have made a written request to the solicitor or other counsel for the State for such inspection, examination, copying or testing of one or more specifically identified exhibits or the examination of a specific expert witness and have had such request denied by the solicitor or other counsel for the State or have had such request remain unanswered for a period of more than 15 days (1967, c. 1064.)

§ 15-155.5. Contents of order for examination of expert witnesses.—Such order for examination of the expert witnesses of the State may contain such protective provisions on behalf of the State or the witnesses as the judge deems just and reasonable, and may also direct the attendance of such witnesses for such examination. (1967, c. 1064.)

ARTICLE 17.

Trial in Superior Court.

§ 15-162. Prisoner standing mute, plea of "not guilty" entered.

Applied in *State v. Childs*, 265 N.C. 575, 144 S.E.2d 653 (1965); **Cited** in *State v. Spence*, 274 N.C. 536, 164 S.E.2d 593 (1968); *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967).

§ 15-162.1: Repealed by Session Laws 1969, c. 117.

§§ 15-163 to 15-165: Repealed by Session Laws 1967, c. 218, s. 4.

Cross References. — For present provisions as to peremptory challenges in criminal cases, see § 9-21. As to challenge to special venire, see § 9-11.

§ 15-166. Exclusion of bystanders in trials for rape.

Exclusion of Bystanders Does Not Deny Right to Public Trial. — There was no merit in the contention of the defendants that the exclusion of bystanders during the

testimony of the prosecutrix in a prosecution for rape denied them the right to a public trial. *State v. Yoes*, 271 N.C. 616, 157 S.E.2d 386 (1967).

§ 15-169. Conviction of assault, when included in charge.

When Section Applicable.—

In accord with original. See *State v. Williams*, 275 N.C. 77, 165 S.E.2d 481 (1969); *State v. Stalnaker*, 1 N.C. App. 524, 162 S.E.2d 76 (1968).

This section is not applicable where all the evidence for the State, uncontradicted by any evidence for the defendant, if believed by the jury, shows that the crime charged in the indictment was committed as alleged therein, and there is no evidence tending to support a contention that the defendants, if not guilty of the crime charged in the indictment, were guilty of a crime of less degree. *State v. Cox*, 201 N.C. 357, 160 S.E. 358 (1931); *State v. Smith*, 268 N.C. 167, 150 S.E.2d 194 (1966).

This section is not applicable, where all the evidence for the State, uncontradicted by any evidence for the defendant, if believed by the jury, shows that the crime charged in the indictment was committed as alleged therein. *State v. LeGrande*, 1 N.C. App. 25, 159 S.E.2d 265 (1968).

Same—Failure to Charge upon Lesser Degree.—

Where the evidence tended to show that defendant was apprehended by the owner of a filling station after defendant had broken into the station, and that defendant, by the use of a pistol, disarmed such owner and took his rifle, even conceding that defendant took the rifle "for a temporary use" and that he intended thereafter to abandon the rifle at the first opportunity, the evidence conclusively showed that defendant intended to deprive the owner permanently of the rifle or to leave the recovery of the rifle by the owner to mere chance; therefore the evidence disclosed the *animus furandi*, and did not require the court to sub-

mit the question of defendant's guilt of assault as a less degree of the offense of robbery with firearms. *State v. Smith*, 268 N.C. 167, 150 S.E.2d 194 (1966).

The necessity for instructing the jury as to an included crime of lesser degree than that charged arises when and only when there is evidence from which the jury could find that such included crime of lesser degree was committed. The presence of such evidence is the determinative factor. *State v. Williams*, 275 N.C. 77, 165 S.E.2d 481 (1969).

The necessity for instructing the jury as to an included crime of lesser degree than that charged arises when and only when there is evidence from which the jury could find that such included crime of lesser degree was committed. The presence of such evidence is the determinative factor. Hence, there is no such necessity if the State's evidence tends to show a completed robbery and there is no conflicting evidence relating to elements of the crime charged. Mere contention that the jury might accept the State's evidence in part and might reject it in part will not suffice. *State v. Legrande*, 1 N.C. App. 25, 159 S.E.2d 265 (1968).

The court is not required to submit to the jury a lesser included offense when there is no evidence of such lesser included offense. *State v. LeGrande*, 1 N.C. App. 25, 159 S.E.2d 265 (1968).

Applied in *State v. Fletcher*, 268 N.C. 140, 150 S.E.2d 54 (1966); *State v. Hamm*, 1 N.C. App. 444, 161 S.E.2d 758 (1968).

Cited in *Bumper v. North Carolina*, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968).

§ 15-170. Conviction for a less degree or an attempt.

Application of Section.—

In accord with 3rd paragraph in original. See *State v. Williams*, 275 N.C. 77, 165 S.E.2d 481 (1969); *State v. Stalnaker*, 1 N.C. App. 524, 162 S.E.2d 76 (1968).

Equivalent of Verdict of Not Guilty.— When, upon arraignment, or thereafter in open court, and in the presence of the defendant, the solicitor announces the State will not ask for a verdict of guilty of the maximum crime charged but will

ask for a verdict of guilty on a designated and included lesser offense embraced in the bill, and the announcement is entered in the minutes of the court, the announcement is the equivalent of a verdict of not guilty on the charge or charges the solicitor has elected to abandon. *State v. Gaston*, 4 N.C. App. 575, 167 S.E.2d 510 (1969).

A defendant may plead guilty to less degrees of the same crimes charged in the

indictments against him, and the State may accept such pleas. *State v. Woody*, 271 N.C. 544, 157 S.E.2d 108 (1967).

Evidence Must Justify, etc.—

This section does not make mandatory the submission to the jury of a lesser included offense where the indictment does not charge such offense and where there is no evidence of such offense. *State v. McLean*, 2 N.C. App. 460, 163 S.E.2d 125 (1968); *State v. Stevenson*, 3 N.C. App. 46, 164 S.E.2d 24 (1968).

Simple assault is a lesser degree of the crime of aggravated assault. *State v. Jeffries*, 3 N.C. App. 218, 164 S.E.2d 398 (1968).

In a prosecution for assault with a deadly weapon, etc.—

An indictment sufficiently charging defendant with assault with a deadly weapon, to wit, a pistol, with intent to kill and inflicting serious injury not resulting in death, includes the offense of assault with a deadly weapon. *State v. Caldwell*, 269 N.C. 521, 153 S.E.2d 34 (1967).

In a prosecution for burglary, etc.—

A felonious entering into a house otherwise than burglariously with intent to commit larceny, a violation of § 14-54, is a less degree of the felony of burglary in the first degree. *State v. Fikes*, 270 N.C. 780, 155 S.E.2d 277 (1967).

The defendant was charged with burglary in the first degree in the bill of indictment. And when the solicitor stated that he would not ask for a verdict of first degree burglary, but would only ask for a verdict of second degree burglary on the indictment, it was tantamount to taking a *nolle prosequi* with leave on the capital charge. *State v. Gaston*, 4 N.C. App. 575, 167 S.E.2d 510 (1969).

In Prosecution for Robbery.—

It is true that in a prosecution for robbery with firearms, an accused may be acquitted of the major charge and convicted of an included or lesser offense, such as common-law robbery, or assault, or larceny from the person, or simple larceny, if a verdict for the included or lesser of-

§ 15-173. Demurrer to the evidence.

Compared with § 1-183.—

Former § 1-183 was the statute setting forth the procedure to make a motion for judgment of compulsory nonsuit in civil actions and this section is the statute setting forth the procedure to make a motion for judgment of compulsory nonsuit in criminal actions. *Jenkins v. Hawthorne*, 269 N.C. 672, 153 S.E.2d 339 (1967).

No Difference in Motion to Dismiss and

fense is supported by allegations of the indictment and by evidence on the trial. *State v. McLean*, 2 N.C. App. 460, 163 S.E.2d 125 (1968).

A violation of § 14-54 is a less degree of the felony of burglary in the first degree. *State v. Gaston*, 4 N.C. App. 575, 167 S.E.2d 510 (1969).

Necessity for instructing jury, etc.—

In accord with original. See *State v. Williams*, 2 N.C. App. 194, 162 S.E.2d 688 (1968); *State v. Williams*, 275 N.C. 77, 165 S.E.2d 481 (1969); *State v. Stevenson*, 3 N.C. App. 46, 164 S.E.2d 24 (1968); *State v. Lilley*, 3 N.C. App. 276, 164 S.E.2d 498 (1968); *State v. Bailey*, 4 N.C. App. 407, 167 S.E.2d 24 (1969).

The necessity for instructing the jury as to an included crime of lesser degree than that charged arises when and only when there is evidence from which the jury could find that such included crime of lesser degree was committed. The presence of such evidence is the determinative factor. Hence, there is no such necessity if the State's evidence tends to show a completed robbery and there is no conflicting evidence relating to elements of the crime charged. Mere contention that the jury might accept the State's evidence in part and might reject it in part will not suffice. *State v. McLean*, 2 N.C. App. 460, 163 S.E.2d 125 (1968).

This section does not compel the trial court to charge on the lesser included offense where the evidence is such that the jury could not find that such lesser crime was committed. *State v. Stevenson*, 3 N.C. App. 46, 164 S.E.2d 24 (1968).

Applied in *State v. Fletcher*, 268 N.C. 140, 150 S.E.2d 54 (1966); *State v. Worthey*, 270 N.C. 444, 154 S.E.2d 515 (1967).

Quoted in *State v. Perry*, 265 N.C. 517, 144 S.E.2d 591 (1965).

Cited in *Bumper v. North Carolina*, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968); *State v. Dickens*, 272 N.C. 515, 158 S.E.2d 614 (1968).

Motion for Judgment as in Case of Non-suit.—As used in this section, there is no difference in legal significance between a motion "to dismiss the action" and a motion "for judgment as in case of nonsuit." *State v. Cooper*, 275 N.C. 283, 167 S.E.2d 266 (1969).

A motion for judgment as in case of non-suit challenges the sufficiency of the State's evidence to warrant its submission

to the jury and to support a verdict of guilty of the criminal offense charged in the warrant or indictment on which the prosecution is based. *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

Means of Raising Objection, etc.—

In accord with original. See *State v. Wiggs*, 269 N.C. 507, 153 S.E.2d 84 (1967).

The objection that the evidence is not sufficient to carry the case to the jury must be raised during the trial by a motion for a compulsory nonsuit under this section or by a prayer for instruction to the jury. *State v. Glover*, 270 N.C. 319, 154 S.E.2d 305 (1967).

Whether Competent or Incompetent.—

In accord with original. See *State v. Walker*, 266 N.C. 269, 145 S.E.2d 833 (1966).

Same—Waiver.—

In accord with 2nd paragraph in original. See *State v. Fikes*, 270 N.C. 780, 155 S.E.2d 277 (1967).

By introducing evidence after the denial of his motion for judgment of nonsuit, made when the State had rested its case, defendant waived the motion for dismissal which he made prior to the introduction of his evidence. *State v. Prince*, 270 N.C. 769, 154 S.E.2d 897 (1967).

Sufficiency of Evidence.—

In accord with 6th paragraph in original. See *State v. Walker*, 266 N.C. 269, 145 S.E.2d 833 (1966).

In accord with 7th paragraph in original. See *State v. Bogan*, 266 N.C. 99, 145 S.E.2d 374 (1965).

Upon a motion for judgment of nonsuit the evidence offered by the State must be taken in the light most favorable to the State and conflicts therein must be resolved in the State's favor, the credibility and effect of such evidence being a question for the jury. *State v. Church*, 265 N.C. 534, 144 S.E.2d 624 (1965).

Upon a motion for judgment of nonsuit, the evidence is taken in the light most favorable to the State and it is entitled to the benefit of every reasonable inference to be drawn therefrom. *State v. Beaver*, 266 N.C. 115, 145 S.E.2d 330 (1965).

On motion for judgment of nonsuit the evidence must be considered in the light most favorable to the State and contradictions and discrepancies therein do not warrant the granting of the motion. *State v. Jackson*, 265 N.C. 558, 144 S.E.2d 584 (1965).

§ 15-173.1. Review of sufficiency of evidence on appeal.—The sufficiency of the evidence of the State in a criminal case is reviewable upon appeal

On a motion to nonsuit, the evidence is to be considered in its most favorable light for the State, and the State is entitled to every inference of fact which may reasonably be deduced from the evidence, and contradictions and discrepancies in the State's evidence are for the jury to resolve and do not warrant the granting of the motion of nonsuit. *State v. Carter*, 265 N.C. 626, 144 S.E.2d 826 (1965).

If there be any evidence tending to prove the fact in issue, or which reasonably conduces to its conclusion as a fairly logical and legitimate deduction, and not merely such as raises a suspicion or conjecture in regard to it, the case should be submitted to the jury. *State v. Bogan*, 266 N.C. 99, 145 S.E.2d 374 (1965).

There must be substantial evidence of all material elements of the offense to withstand the motion to dismiss. *State v. Bogan*, 266 N.C. 99, 145 S.E.2d 374 (1965).

Same—Circumstantial Evidence.—

Motion to nonsuit should be denied if there is substantial evidence tending to prove each essential element of the offense charged. This rule applies whether the evidence is direct or circumstantial, or a combination of both. *State v. Stephens*, 244 N.C. 380, 93 S.E.2d 431 (1956).

The rule for determining the sufficiency of circumstantial evidence to withstand a motion for judgment as in case of nonsuit as set forth in *State v. Stephens*, 244 N.C. 380, 93 S.E.2d 431 (1956), is established law in this jurisdiction. *State v. Chavis*, 270 N.C. 306, 154 S.E.2d 340 (1967).

Variance.—

The defendant in a criminal action may raise the question of variance between the indictment and proof by a motion for nonsuit. *State v. Bell*, 270 N.C. 25, 153 S.E.2d 741 (1967); *State v. Overman*, 257 N.C. 464, 125 S.E.2d 920 (1962).

Demurrer to the Evidence Properly Denied.—

See *State v. Hill*, 266 N.C. 103, 145 S.E.2d 346 (1965) (prosecution for assault with a brick); *State v. Burgess*, 266 N.C. 363, 145 S.E.2d 905 (1966) (prosecution for larceny).

Applied in *State v. Frazier*, 268 N.C. 249, 150 S.E.2d 431 (1966).

Cited in *State v. Meadows*, 272 N.C. 327, 158 S.E.2d 638 (1968); *State v. Howard*, 274 N.C. 186, 162 S.E.2d 495 (1968).

without regard to whether a motion has been made pursuant to G.S. 15-173 in the trial court. (1967, c. 762.)

Quoted in *State v. Davis*, 273 N.C. 349, 160 S.E.2d 75 (1968).

§ 15-175. Nol. pros. after two terms; when capias and subpoenas to issue.

Editor's Note.—For note on nolle prosequi with leave, see 44 N.C.L. Rev. 1126 (1966).

Applied in *Klopfer v. North Carolina*, 368 U.S. 213, 87 Sup. Ct. 226, 17 L. Ed. 2d 141 (1967).

§ 15-176.1. Solicitor may argue for death penalty.

Arguments by Solicitor Held Proper, etc.—

See *State v. Spence*, 271 N.C. 23, 155 S.E.2d 802 (1967).

ARTICLE 18.

Appeal.

§ 15-177.1. Appeal from justice of the peace or inferior court; trial anew or de novo.

Definition.—The words "without prejudice from the former proceedings of the court below, irrespective of the plea entered or the judgment pronounced thereon" mean, among other things, that evidence as to a plea of guilty entered by a defendant in the inferior court is not competent against him on his trial de novo on his appeal in the superior court. To hold otherwise in a criminal case on appeal would render meaningless the words "without prejudice" and "irrespective of the plea entered." *State v. Overby*, 4 N.C. App. 280, 166 S.E.2d 461 (1969).

Upon appeal from a county court to the superior court, a defendant, by virtue of the provisions of this section, is entitled to a trial de novo by a jury, without prejudice from the former proceedings of the court below, and regardless of his plea of guilty and the judgment pronounced thereon in the county court. *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

Trial De Novo.—Whenever the accused in a criminal action appeals to the superior court from an inferior court, the action is to be tried anew from the beginning to the end in the superior court on both the law and the facts, without regard to the plea, the trial, the verdict, or the judgment in the inferior court. *Spriggs v. North Carolina*, 243 F. Supp. 57 (M.D.N.C. 1965); *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

By virtue of this section whenever the accused in a criminal action appeals to the superior court from an inferior court, the action is to be tried anew from the beginning to the end in the superior court on

both the law and the facts, without regard to the plea, the trial, the verdict, or the judgment in the inferior court. *State v. Stilley*, 4 N.C. App. 638, 167 S.E.2d 529 (1969).

When a defendant in a criminal action appeals to the superior court from an inferior court, he is entitled to a trial anew and de novo by a jury from the beginning to the end in the superior court on both the law and the facts, without regard to the plea, the trial, the verdict, or the judgment in the inferior court. *State v. Overby*, 4 N.C. App. 280, 166 S.E.2d 461 (1969).

Sentence of Superior Court, etc.—

In accord with original. See *State v. Morris*, 2 N.C. App. 262, 163 S.E.2d 108 (1968); *State v. Thompson*, 2 N.C. App. 508, 163 S.E.2d 410 (1968).

In the superior court the defendant may be tried upon the original accusation of the district court and without an indictment by a grand jury. *State v. Thompson*, 2 N.C. App. 508, 163 S.E.2d 410 (1968).

Judge of superior court is necessarily required to enter his own independent judgment, since the trial in the superior court is without regard to the proceedings in the inferior court. *Spriggs v. North Carolina*, 243 F. Supp. 57 (M.D.N.C. 1965); *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

Amendment to Warrant.—As a general proposition the superior court, on an appeal from an inferior court upon a conviction of a misdemeanor, has power to allow an amendment to the warrant, provided the charge as amended does not

change the offense with which defendant was originally charged. *State v. Thompson*, 2 N.C. App. 508, 163 S.E.2d 410 (1968).

Absence of Original Warrant as Ground for Attacking Jurisdiction of Superior Court.—In North Carolina appeals to the superior court from inferior courts, a defendant may be tried on the original warrant issued in the inferior court, but only after a defendant has been tried and convicted on the original warrant in the inferior court. Therefore, petitioner may at-

tack the jurisdiction of the superior court by attacking the absence of the original warrant. *Spriggs v. North Carolina*, 243 F. Supp. 57 (M.D.N.C. 1965).

Absence of Counsel in Inferior Court.—Where petitioner is given a trial *de novo* in the superior court with the aid and benefit of counsel, and nothing done in the inferior court is used against him or to his prejudice, lack of counsel in the inferior court in no way denies petitioner due process of law. *Doss v. North Carolina*, 252 F. Supp. 298 (M.D.N.C. 1966).

§ 15-179. When State may appeal.—An appeal to the appellate division or superior court may be taken by the State in the following cases, and no other. Where judgment has been given for the defendant—

- (1) Upon a special verdict.
- (2) Upon a demurrer.
- (3) Upon a motion to quash.
- (4) Upon arrest of judgment.
- (5) Upon a motion for a new trial on the ground of newly discovered evidence, but only on questions of law.
- (6) Upon declaring a statute unconstitutional. (Code, s. 1237; Rev., s. 3276; C. S., s. 4649; 1945, c. 701; 1969, c. 44, s. 35.)

Editor's Note.—

The 1969 amendment substituted "appellate division" for "Supreme Court" in the first sentence.

State v. Vaughan, 268 N.C. 105, 150 S.E.2d 31 (1966).

The 1945 amendment to this section does not authorize an appeal by the State from a judgment as in case of nonsuit notwithstanding such judgment is based in part upon a ruling that a statute purporting to create a rule of evidence is unconstitutional. *State v. Vaughan*, 268 N.C. 105, 150 S.E.2d 31 (1966).

Order Sustaining, etc.—

In accord with 2nd paragraph in original. See *State v. Peguise*, 2 N.C. App. 526, 163 S.E.2d 294 (1968).

Applied in *State v. Matthews*, 270 N.C. 35, 153 S.E.2d 791 (1967).

Cited in *State v. Hundley*, 272 N.C. 491, 158 S.E.2d 582 (1968); *State v. Dorsett*, 3 N.C. App. 331, 164 S.E.2d 607 (1968).

No Appeal from Judgment as in Case of Nonsuit.—This section contains no provision authorizing an appeal by the State from a judgment as in case of nonsuit.

§ 15-180. Appeal by defendant to appellate division.—In all cases of conviction in the superior court for any criminal offense, the defendant shall have the right to appeal, on giving adequate security to abide the sentence, judgment or decree of the appellate division; and the appeal shall be perfected and the case for the appellate division settled, as provided in civil actions. (1818, c. 962, s. 4, P. R.; R. C., c. 4, s. 21; Code, s. 1234; Rev., s. 3277; C. S., s. 4650; 1969, c. 44, s. 36.)

Cross References.—

As to when appeal taken, see § 1-279.

courts of North Carolina. *State v. Darnell*, 266 N.C. 640, 146 S.E.2d 800 (1966).

In criminal cases the right of appeal by a convicted defendant from a final judgment is unlimited in the courts of North Carolina. *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

Editor's Note.—
The 1969 amendment substituted "appellate division" for "Supreme Court" twice in the section.

The right of appeal is unlimited in the

And Is Easily Abused.—The unlimited right of a defendant to appeal is easily abused by an indigent defendant who may appeal without cost to himself. *State v. Darnell*, 266 N.C. 640, 146 S.E.2d 800 (1966).

This right of appeal is a substantial right. *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

And Sentence May Not Be Suspended on Conditions Conflicting with Such Right.—The execution of a sentence in a criminal action may not be suspended on conditions that conflict with the defendant's right of appeal. *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

Authority of Court from Which Appeal Taken.—After an appeal is taken, the court from which it is taken has no authority with reference to the appellate procedure except that specifically conferred upon it by the statute. *State v. Atkinson*, 275 N.C. 288, 167 S.E.2d 241 (1969).

Period in Which Appeal to Be Taken.—Under this section and § 1-279 an appeal must be taken by a defendant in a criminal action within ten days after rendition of judgment, unless the record shows an appeal taken at the trial. *Van Mitchell v. North Carolina*, 247 F. Supp. 139 (E.D.N.C. 1964).

This section, by incorporating the provisions of § 1-279, provides that notice of appeal must be filed within ten days after rendition of judgment. The constitutionality of this requirement was upheld by the Supreme Court of the United States in *Brown v. Allen*, 344 U.S. 443, 73 Sup. Ct. 397, 97 L. Ed. 469 (1953). *Fox v. North Carolina*, 266 F. Supp. 19 (E.D.N.C. 1967).

Exercise of Right, etc.—

In accord with 1st paragraph in original.

§ 15-180.1. Defendant may appeal from a suspended sentence.

Quoted in *State v. Baynard*, 4 N.C. App. 645, 167 S.E.2d 514 (1969).

§ 15-181. Defendant may appeal without security for costs.—Whenever an indigent entitled to counsel under the provisions of chapter 7A, subchapter IX, has been convicted in the superior court, he shall have the right to appeal without giving security for costs. (1869-70, c. 196, s. 1; Code, s. 1235; Rev., s. 3278; C. S., s. 4651; 1933, c. 197; 1937, c. 330; 1951, c. 81; 1963, c. 954; 1969, c. 1013, s. 7.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, rewrote this section.

See *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

Appeal Not Waived by Consent to Terms of Judgment.—Defendant's consent to the terms of a judgment does not constitute a waiver of his right of appeal for errors to be assigned. *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

Defendant Held Not to Have Knowingly and Intelligently Waived His Right of Appeal.—See *Fox v. North Carolina*, 266 F. Supp. 19 (E.D.N.C. 1967).

It is the duty of appellant, etc.—

In accord with original. See *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967).

Right to Review and Equal Protection Denied.—Where, on April 21, 1962, petitioner wrote trial judge a letter expressing his desire to appeal and delivered the letter to prison authorities on April 21 to be mailed to the trial judge, and it was so mailed on April 27, and thereafter, the trial judge informed petitioner that he had failed to give notice of appeal in apt time, the petitioner, being an indigent prisoner without counsel at the time of his attempted appeal, was denied the statutory right to appellate review and his constitutional right of equal protection of the law. *Van Mitchell v. North Carolina*, 247 F. Supp. 139 (E.D.N.C. 1964).

Applied in *State v. Staten*, 271 N.C. 600, 157 S.E.2d 225 (1967).

Quoted in *Pitts v. North Carolina*, 267 F. Supp. 870 (M.D.N.C. 1967).

Cited in *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968); *State v. Hickman*, 2 N.C. App. 627, 163 S.E.2d 632 (1968); *Anders v. Turner*, 379 F.2d 46 (4th Cir. 1967).

Cited in *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

§ 15-183. Bail pending appeal; custody of convicted persons not released on bail.—When any person convicted of a misdemeanor or felony other than a capital offense and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal; provided, in capital cases where

the sentence is life imprisonment, the court, in its discretion, may allow such person to give bail pending appeal.

Any person who shall appeal to the Appellate Division of the General Court of Justice, having been sentenced to a term of imprisonment for longer than thirty days, and is not released pursuant to this section pending appeal, such person may be placed in the custody of the Commissioner of Correction until such time as he may be released upon bail or by other lawful means and pending the action of the Appellate Division. (1850-1, c. 2; R. C., c. 35, s. 12; Code, s. 1181; Rev., s. 3280; C. S., s. 4653; 1953, c. 56; 1969, c. 542, s. 1.)

Editor's Note.—

The 1969 amendment added the second paragraph.

Session Laws 1969, c. 542, s. 3 provides: "This act shall become effective upon its ratification and shall apply to all persons

who have appeals pending from and after ratification." The act was ratified May 19, 1969.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Correction, 8/18/69.

§ 15-183.1. When copy of evidence and charge furnished solicitor; taxed as costs.—When an appeal in a criminal action is taken to the appellate division, and the defendant's attorney has ordered from the court reporter a transcript of the evidence and charge of the court or a transcript of the evidence alone, the court reporter shall furnish to the State solicitor a copy of the evidence of the case and the charge of the court. The county commissioners shall pay the court reporter for said transcript of the evidence and charge of the court, and the same shall be taxed as costs in said criminal action. Whenever there has been a change of venue, the bill for said copy of the evidence and charge of the court shall be paid by the county commissioners of the county in which the criminal action originated. (1951, c. 1080; 1969, c. 44, s. 37.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" near the beginning of the section.

§ 15-184. Appeal not to vacate judgment; stay of execution.—In criminal cases an appeal to the appellate division shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or obtaining an order allowing appeal in forma pauperis, there shall be a stay of execution during the pendency of the appeal. The clerk of the superior court shall, after execution is stayed, as provided in this section, notify the Attorney General thereof. Said notice shall give the name of defendant, the crime of which he was convicted and if the statutory time for perfecting the appeal has been extended by agreement or otherwise, the time of such extension. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the appellate division, he may appear before the clerk of the superior court in which he was convicted and request in writing withdrawal of the appeal. The said clerk shall file and make an entry of such withdrawal and shall, if a sentence be called for, issue a commitment and deliver same to the sheriff. The sentence shall begin as of the date of the issuance of the commitment. (1887, c. 191, s. 1; c. 192, s. 4; Rev., s. 3281; 1919, c. 5; C. S., s. 4654; 1955, c. 882; 1969, c. 44, s. 38.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the first and fourth sentences.

Session Laws 1969, c. 266, which also amended this section, was repealed by Session Laws 1969, c. 888, which enacted § 15-186.1 in its place.

Quoted in Anders v. Turner, 379 F.2d 46 (4th Cir. 1967).

§ 15-185. Judgment for fines docketed; lien and execution.—When the sentence in whole or in part directs the payment of a fine, the judgment shall be docketed by the clerk and be a lien on the real estate of the defendant in the same manner as judgments in civil actions, and executions thereon shall only be stayed, upon an appeal taken, by security being given in like manner as is

required in civil cases. Should the judgment be affirmed upon appeal to the appellate division, the clerk of the superior court, on receipt of the certificate from the appellate division, shall issue execution on such judgment. (1887, c. 191, s. 3; Rev., s. 3282; C. S., s. 4655; 1969, c. 44, s. 39.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" twice in the second sentence. Cited in State v. Ferebee, 266 N.C. 606, 146 S.E.2d 666 (1966).

§ 15-186. Procedure upon receipt of certificate of appellate division.—The clerk of the superior court in all cases where the judgment has been affirmed (except where the conviction is a capital felony), shall forthwith on receipt of the certificate of the opinion of the appellate division notify the sheriff, who shall proceed to execute the sentence which was appealed from. In criminal cases where the judgment is not affirmed the cases shall be placed upon the docket for trial at the first ensuing term of the court after the receipt of such certificate. (1887, c. 192, s. 3; Rev., s. 3283; C. S., s. 4656; 1969, c. 44, s. 40.)

Editor's Note.—The 1969 amendment substituted "appellate division" for "Supreme Court" in the first sentence.

§ 15-186.1. Credit on sentence pending appeal.—Whenever a judgment containing a sentence of imprisonment has been affirmed by the appellate division of the General Court of Justice or whenever an appeal from such a judgment has been withdrawn pursuant to G.S. 15-184, the sentence shall begin as of the date of the commitment issued pursuant to G.S. 15-186 or 15-184 respectively. In the event the defendant had not been admitted to bail pending the appeal, he shall receive credit towards the satisfaction of the sentence for all the time he has spent in custody pending the appeal, except when the sentence is death or life imprisonment. Provided, however, if the sentence on appeal is a consecutive sentence imposed to begin at the expiration of a sentence or sentences by virtue of which the defendant is in custody, then, in that event, the defendant will not be entitled to receive credit on the sentence on appeal for the time spent in custody by virtue of the preexisting sentence or sentences. This provision shall apply to all trials commenced after the ratification of this section. (1969, cc. 266, 888.)

Editor's Note.—Session Laws 1969, c. 266, amended § 15-184 by adding to it provisions similar to those contained in the above section. Session Laws 1969, c. 888, repealed the amendment to § 15-184 and enacted the above section in its place. Chapter 266 was ratified April 22, 1969, and c. 888 was ratified June 16, 1969.

ARTICLE 20.

Suspension of Sentence and Probation.

§ 15-197. Suspension of sentence and probation.

Editor's Note.—

For a brief comparison of criminal law sanctions in two civil rights cases, see 43 N.C.L. Rev. 667 (1965).

Probation and Parole Distinguished.—Probation relates to judicial action taken before the prison door is closed, whereas parole relates to executive action taken after the door has closed on a convict. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Probation or suspension of sentence is not a right granted by either the Constitu-

tion of the United States or the Constitution of this State, but is an act of grace to one convicted of crime. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

An order suspending the imposition, etc.—

When a sentence of imprisonment in a criminal case is suspended upon certain valid conditions expressed in a probation judgment, defendant has a right to rely upon such conditions, and as long as he complies therewith the suspension must stand. In such a case, defendant carries

the keys to his freedom in his willingness to comply with the court's sentence. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

§ 15-199. Conditions of probation.

Editor's Note.—

Subdivision (7) in the replacement volume should read as follows: "(7) Deposit with the clerk of the court a bond for his appearance at such time or times as the court may direct. In the event the probationer is unable to provide the bond otherwise, the court may require the bond to be paid in cash from his earnings in such in-

Cited in State v. Baynard, 4 N.C. App. 645, 167 S.E.2d 514 (1969).

stallments and at such intervals as the court may direct."

The condition that a probationer avoid injurious or vicious habits is a valid condition of probation. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Quoted in State v. Seagraves, 266 N.C. 112, 145 S.E.2d 327 (1965).

§ 15-200. Termination of probation, arrest, subsequent disposition.

—The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended, terminated or suspended by the court at any time, within the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant the arresting officer shall have a written statement signed by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation; and said statement shall be sufficient warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer shall be brought before the judge of the court. Such probation officer shall forthwith report such arrest and detention to the judge of the court, or in superior court cases to the judge holding the courts of the district, or the resident judge, or any judge commissioned at the time to hold court in said district, and submit in writing a report showing in what manner the probationer has violated probation. Upon such arrest, with or without warrant, the court shall cause the defendant to be brought before it in or out of term and may revoke the probation or suspension of sentence, and shall proceed to deal with the case as if there had been no probation or suspension of sentence. If at any time during the period of probation or suspension of sentence a warrant is issued and the defendant is arrested for a violation of any of the conditions of probation or suspension of sentence, or in the event any person is arrested at the instance of a probation officer, the defendant shall be allowed to give bond pending a hearing before the judge of the court, and the court issuing the order of arrest shall in said order, fix the amount of the appearance bond, or if appearance bond should not be fixed by the court, the officer having the defendant in charge shall take sufficient justified bail for the defendant's appearance at said hearing and the bond shall be returnable at such time and place as shall be designated by the probation officer.

Where a probationer resides in, or violates the terms of his probation in, a county and judicial district other than that in which said probationer was placed on probation, concurrent jurisdiction is hereby vested in the resident judge of superior court of the district in which said probationer resides or in which he violates the terms of his probation, or the judge of superior court holding the courts of such district, or a judge of the superior court commissioned to hold court in such district, to issue warrants for the arrest of such probationer, to

discharge such probationer from probation, to continue, extend, suspend or terminate the period of probation of such probationer, and to revoke probation and enter judgment or put into effect suspended sentences of probation judgment, for breach of the conditions of probation, as fully as same might be done by the courts of the county and district in which such probationer was placed on probation, when such probationer was originally placed on probation by a superior court judge; provided, that the court may, in its discretion, for good cause shown, and shall on request of the probationer, return such probationer for hearing and disposition to the county or judicial district in which such probationer was originally placed on probation; provided, that in cases where the probation is revoked in a county other than the county of original conviction, the clerk in such county revoking probation may record the order of revocation in the judge's minute docket, which shall constitute sufficient permanent record of the proceedings in that court, and shall send one copy of the order revoking probation to the North Carolina Department of Correction to serve as a temporary commitment, and shall send the original order revoking probation and all other papers pertaining thereto, to the county of original conviction to be filed with the original records; the clerk of the county of original conviction shall then issue a formal commitment to the North Carolina Department of Correction. (1937, c. 132, s. 4; 1939, c. 373; 1953, c. 43; 1955, c. 120; 1959, c. 424; 1961, c. 1185; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "Department of Correction" for "Prison Department" in two places in the last sentence.

Purpose.—The primary purpose of a suspended sentence or parole is to further the reform of the defendant. *State v. Baynard*, 4 N.C. App. 645, 167 S.E.2d 514 (1969).

Prisoner Has Right to Rely on Conditions of Suspension.—Where a sentence in a criminal case is suspended upon certain valid conditions expressed in the sentence imposed, the prisoner has a right to rely upon such conditions. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965).

And so long as he complies with such conditions, the suspension should stand. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965).

Conduct Violating Condition of Suspension on Good Behavior.—Behavior such as will warrant a finding that a defendant has breached the condition of suspension on good behavior must be conduct which

constitutes a violation of some criminal law of the State. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965).

Burden of proof is upon the State to show that the defendant has violated one of the conditions of his probation. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965).

It Need Not Be Proved, etc.—

Upon a hearing to determine whether or not probation should be revoked, and a sentence previously suspended should be activated, all that is required is that the evidence be such as reasonably to satisfy the judge, in the exercise of his sound discretion, that the defendant has violated a valid condition upon which the sentence was so suspended. *State v. Seagraves*, 266 N.C. 112, 145 S.E.2d 327 (1965).

Suspension of sentence for a period of five years is within the limits provided by law. *State v. Baynard*, 4 N.C. App. 645, 167 S.E.2d 514 (1969).

Cited in *State v. Langley*, 3 N.C. App. 189, 164 S.E.2d 529 (1968).

§ 15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation.—In all cases of probation or suspension of sentence in the superior courts and in courts inferior to the superior courts, before a probation or suspension of sentence may be revoked, the probation officer, solicitor or other officer shall inform the probationer in writing of his intention to pray the court to revoke probation or suspension and to put the suspended sentence into effect, and shall set forth in writing the grounds upon which revocation is prayed. The probationer shall be entitled to representation by counsel, including court-appointed counsel if he is indigent and had counsel at the trial or if more than six month's confinement is possible as a result of revocation of

probation. He is also entitled to a reasonable time to prepare his defense. In all cases where probation or suspension of sentence entered in a court inferior to the superior court is revoked and sentence is placed into effect, the defendant shall have the right of appeal therefrom to the superior court, and, upon such appeal, the matter shall be determined by the judge without a jury, but only upon the issue of whether or not there has been a violation of the terms of probation or of the suspended sentence. Upon its finding that the conditions were violated, the superior court shall enforce the judgment of the lower court unless the judge finds as a fact that circumstances and conditions surrounding the terms of the probation and the violation thereof have substantially changed, so that enforcement of the judgment of the lower court would not accord justice to the defendant, in which case the judge may modify or revoke the terms of the probationary or suspended sentence in the court's discretion. Appeals from lower courts to the superior courts from judgments revoking probation or invoking suspended sentences may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. (1951, c. 1038; 1963, c. 632, s. 3; 1969, c. 1013, s. 8.)

Cross Reference.—See note to § 15-200.

Editor's Note.—

The 1969 amendment, effective July 1, 1969, added the second sentence and rewrote the third sentence.

Notice and Opportunity to Be Heard Required.—A defendant on probation or a defendant under a suspended sentence, before any sentence of imprisonment is put into effect and activated, shall be given notice in writing of the hearing in apt time and an opportunity to be heard. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967); State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967).

But a proceeding to revoke probation is not a criminal prosecution. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967); State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967).

The rights of an offender in a proceeding to revoke his conditional liberty under probation are not coextensive with the federal constitutional rights of one on trial in a criminal prosecution. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

The difference between hearings as to whether probation shall be revoked and criminal trials is so great that procedural requirements in criminal trials ought not to be imposed in absolute terms in hearings to revoke probation. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

And Formal Trial Is Not Required.—There is no statute in this State requiring a formal trial in a proceeding to revoke probation. State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967); State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Proceedings to revoke probation are often regarded as informal or summary. State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967); State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Court Is Not Bound by Strict Rules of Evidence.—Upon a hearing to revoke probation, the court is not bound by strict rules of evidence, and the alleged violation of a valid condition of probation need not be proven beyond a reasonable doubt. State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967); State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Whether defendant has violated valid conditions of probation is not an issue of fact for a jury, but is a question of fact for the judge to be determined in the exercise of his sound discretion. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967).

Sufficiency of Evidence.—All that is required in a hearing to revoke probation is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended. State v. Hewett, 270 N.C. 348, 154 S.E.2d 476 (1967); State v. Duncan, 270 N.C. 241, 154 S.E.2d 53 (1967).

Quoted in State v. Langley, 3 N.C. App. 189, 164 S.E.2d 529 (1968).

Cited in State v. Hill, 266 N.C. 107, 145 S.E.2d 346 (1965).

§ 15-200.2. Bill of particulars as prerequisite to praying that suspended sentence be placed in effect.

Sentences to Which Section Applies.—This section applies only to sentences which have been suspended upon specified terms and conditions. *State v. Thompson*, 267 N.C. 653, 148 S.E.2d 613 (1966).

When prayer for judgment has been continued, this section does not require

that the solicitor, before praying judgment, shall serve defendant with a bill of particulars setting forth his reasons for doing so. *State v. Thompson*, 267 N.C. 653, 148 S.E.2d 613 (1966).

Cited in *State v. Hill*, 266 N.C. 107, 145 S.E.2d 346 (1965).

§ 15-205.1. Mandatory review of probation.—It shall be the duty of the probation officer in all cases referred to him to bring the probationer before the appropriate court having jurisdiction for review by the judge to determine whether the probationer should be released from probation after the probationer has actually been on probation for one year, if the period of probation was three years or less, or he has been on probation for three years if the period of probation was for more than three years. The court shall review the probationer's case file and determine whether he should be released from probation. This section shall not restrict the court's power to continue, extend, suspend or terminate the period of probation at any time as provided in G.S. 15-200. (1969, c. 615.)

ARTICLE 21.

Segregation of Youthful Offenders.

§§ 15-210 to 15-216: Repealed by Session Laws 1967, c. 996, s. 17, effective August 1, 1967.

ARTICLE 22.

Review of Criminal Trials.

§ 15-217. Institution of proceeding; effect on other remedies.—Any person imprisoned in the penitentiary, Central Prison, common jail of any county or imprisoned in the common jail of any county and assigned to work under the supervision of the State Department of Correction, who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of North Carolina or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or other common-law or statutory remedy, as to which there has been no prior adjudication by any court of competent jurisdiction, may institute a proceeding under this article.

The remedy herein provided is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction, but, except as otherwise provided in this article it comprehends and takes the place of all other common-law and statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment, and shall be used exclusively in lieu thereof. (1951, c. 1083, s. 1; 1957, c. 349, s. 10; 1959, c. 21; 1965, c. 352, s. 1; 1967, c. 996, s. 13.)

Editor's Note.—

The 1967 amendment, effective Aug. 1, 1967, substituted "State Department of Correction" for "State Prison Department" in the first sentence.

For article on the North Carolina Post-Conviction Hearing Act, see 5 Wake Forest Intra. L. Rev. 287 (1969).

For comment on this article, see 44 N.C.L. Rev. 153 (1965).

Patton v. North Carolina, 256 F. Supp. 225 (W.D.N.C. 1966), cited in the note below, was commented on in 5 Wake Forest Intra. L. Rev. 202 (1969).

Patton v. North Carolina, 381 F.2d 636 (4th Cir. 1967), cited in the note below,

was commented on in 46 N.C.L. Rev. 407 (1968).

Purpose of Article.—

In accord with 1st paragraph in original. See State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

In accord with 2nd paragraph in original. See State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

In accord with 4th paragraph in original. See State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

The purpose of the proceeding under the Post-Conviction Hearing Act is not to determine petitioner's guilt or innocence. That matter has already been determined in the trial and judgment which is the subject of post-conviction review. The purpose of post-conviction review is to determine whether in the proceedings leading to the conviction there occurred any substantial denial of petitioner's constitutional rights. Parker v. State, 2 N.C. App. 27, 162 S.E.2d 526 (1968).

Article Provides Adequate and Enlightened Procedure.—Under this article North Carolina has a wholly adequate and enlightened procedure under which State prisoners may obtain from State courts a review of the constitutionality of their trial and imprisonment. Patton v. North Carolina, 256 F. Supp. 225 (W.D.N.C. 1966).

The Post-Conviction Hearing Act provides every defendant adequate opportunity for the adjudication of claimed deprivations of constitutional rights which prevented him from obtaining a fair trial, provided factors beyond his control prevented him from claiming them earlier. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

The State of North Carolina has provided an adequate, available avenue of collateral attack to correct a denial of federal constitutional rights. Having thus assumed the responsibility of reviewing its trial court proceeding and correcting any deprivation of constitutional rights, it is incumbent upon the State to administer its own laws with an even hand. Tyler v. Croom, 288 F. Supp. 870 (E.D.N.C. 1968).

This article provides a procedure by which a person convicted of crime may thereafter obtain a hearing upon the question whether he was denied due process of law. It affords an opportunity to inquire into the constitutional integrity of his conviction. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

Federal and state courts have concur-

rent jurisdiction in collateral proceedings seeking vindication of federal constitutional rights. Although federal courts are not required to abstain or decline to exercise jurisdiction simply because the rights asserted may be adjudicated in some other forum; nevertheless, comity requires that the federal courts recognize the primary responsibility of the state courts to correct their own errors of constitutional magnitude. Tyler v. Croom, 288 F. Supp. 870 (E.D.N.C. 1968).

Prior to the 1965 amendment to this article, a plethora of remedies confronted a defendant attacking his conviction, the appropriate one depending upon the grounds of his challenge. Occasionally, a defendant would pursue an inappropriate State remedy, be denied relief, come into the federal district court on habeas, and be returned to the State courts to seek the proper writ. The 1965 amendments, however, abolished "all other common-law and statutory remedies" and substituted a unitary proceeding in which all challenges to a conviction may be raised. Anders v. Turner, 379 F.2d 46 (4th Cir. 1967).

The inquiry under this article is limited to a determination whether the petitioners were denied the right to be represented by counsel, to have witnesses, and a fair opportunity to prepare and to present their defense. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

The procedure established by this article is not a substitute for an appeal from the judgment entered at the trial of the criminal charge. Branch v. State, 269 N.C. 642, 153 S.E.2d 343 (1967).

The Post-Conviction Hearing Act is not a substitute for appeal. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

This article does not afford to a person heretofore convicted of crime the right to present to the Supreme Court assignments of error in the trial in which he was convicted and from which he did not appeal. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

Proceedings under this article are not a substitute or an alternative to direct appeal. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

This article does not license a collateral attack upon any ruling which could have properly been presented by a direct appeal from the judgment pronounced in the original trial. State v. White, 274 N.C. 220, 162 S.E.2d 473 (1968).

Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted,

in post-conviction proceedings. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

This article cannot be used to raise the question whether errors were committed in the course of the trial. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

The burden is upon the petitioner seeking a federal habeas corpus to prove, by a preponderance of the evidence, the alleged violations of his constitutional rights. A petitioner does not bear that burden when he has had substantially identical issues previously determined adversely to him in a State post-conviction hearing, this hearing having been held in accordance with the standards required and enunciated in *Townsend v. Sain*, 372 U.S. 293, 83 Sup. Ct. 745, 9 L. Ed. 2d 770 (1963). *Paige v. Ross*, 257 F. Supp. 27 (E.D.N.C. 1966), rev'd on other grounds, 372 F.2d 426 (4th Cir. 1967).

Federal Court May Accept Findings of Fact Made by State Court.—In a federal habeas corpus proceeding, the federal court is free to accept the findings of fact made by the State court after it offered petitioner a full day of hearings in a State post-conviction hearing. *Paige v. Ross*, 257 F. Supp. 27 (E.D.N.C. 1966), rev'd on other grounds, 372 F.2d 426 (4th Cir. 1967).

A federal district judge may, and ordinarily should, accept the facts found in the hearing in the State court. But he need not. In every case he has the power, constrained only by his sound discretion, to receive evidence bearing upon the applicant's constitutional claim. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

Or May Try Facts Anew.—The federal district judge may try the facts anew whenever he supposes that the State court judge has not reliably found the relevant facts. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

Were a prisoner to have both direct and collateral review in the State court of his claim that he was deprived of constitutional rights in his trial, he might still have a *de novo* evidentiary hearing in federal habeas corpus proceedings if the district judge concludes that the facts found by the State court were not reliable findings. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

But conclusory finding by post-conviction court that plea of guilty was voluntarily made was unacceptable in federal habeas corpus proceeding, where state court records contain no resolution of the historic facts, either explicitly or im-

plicitly, as required by *Townsend v. Sain*, 372 U.S. 293, 83 Sup. Ct. 745, 9 L. Ed. 2d 770 (1963). *Neal v. Taylor*, 264 F. Supp. 418 (E.D.N.C. 1967).

This article seems to require that a complainant be in custody under the sentence which he attacks, or otherwise prejudiced by it. *Norkett v. Stallings*, 251 F. Supp. 662 (E.D.N.C. 1966).

Punishment upon Retrial May Not Be Increased.—Increasing a defendant's punishment upon retrial after the reversal of his initial conviction at a post-conviction hearing constitutes a violation of his Fourteenth Amendment rights in that it exacts an unconstitutional condition to the exercise of his right to a fair trial, arbitrarily denies him the equal protection of the law, and places him twice in jeopardy of punishment for the same offense. *Patton v. North Carolina*, 381 F.2d 636 (4th Cir. 1967).

The equal protection clause of the Fourteenth Amendment compels a rule barring a sentence upon retrial in excess of the one invalidated, and this protection extends even to one seeking to avail himself of a state's post-conviction remedies because of nonconstitutional errors in the original trial. *Patton v. North Carolina*, 381 F.2d 636 (4th Cir. 1967).

A defendant's rights are not adequately protected even if a second sentencing judge is restricted to increasing sentence only on the basis of new evidence. A sentence may not be increased following a successful appeal, even where additional testimony has been introduced at the second trial. In order to prevent abuses, the fixed policy must necessarily be that the new sentence shall not exceed the old. *Patton v. North Carolina*, 381 F.2d 636 (4th Cir. 1967).

Credit for Time Served under Vacated Sentence.—Where there is a new trial, in which the defendant's guilt is predicated upon the same conduct from which a previous invalid judgment and sentence arose, time served under the vacated sentence must be fully credited against the time defendant is required to serve under the sentence imposed at the new trial. *Kelly v. North Carolina*, 276 F. Supp. 200 (E.D.N.C. 1967).

The constitutional protection against double jeopardy would be violated if an increased sentence or a denial of credit is permitted on retrial. *Patton v. North Carolina*, 381 F.2d 636 (4th Cir. 1967).

A prisoner's exercise of his right to seek a new trial will not be predicated on the fiction that he has "waived" the bene-

fits of his initial sentence, because of the restrictive effect this has on access to post-conviction remedies. In seeking correction of an erroneous sentence, a defendant does not waive his double jeopardy right not to be subjected to multiple punishment. *Patton v. North Carolina*, 381 F.2d 636 (4th Cir. 1967).

Consent to Be Tried Again.—Before a new trial may be ordered as a result of post-conviction review of a criminal case, the record must clearly show defendant's consent to be tried again. *Williams v. State*, 3 N.C. App. 212, 164 S.E.2d 501 (1968).

Where a petitioner for post-conviction review under this article alleges facts which, if true, entitle him to nothing else but a new trial, he thereby gives consent to be tried again, which consent continues unless the court permits him to withdraw the petition. *Williams v. State*, 3 N.C. App. 212, 164 S.E.2d 501 (1968).

And Hearing Is Precluded, etc.—

Only claims as to which there has been no prior adjudication are justiciable under this article. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

North Carolina's failure to conduct a post-conviction hearing within a reasonable time in accordance with an order of the federal district court deprived petitioner of equal protection or due process of law, entitling him to federal habeas corpus relief. *Tyler v. Croom*, 288 F. Supp. 870 (E.D.N.C. 1968).

Prisoner May Not Be Punished for Obtaining New Trial.—The North Carolina Supreme Court adheres to the basic constitutional principles that a prisoner may not be denied credit for time served, nor punished for obtaining a new trial. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

Effect of Harsher Punishment.—The frequency of harsher punishment (whether by the device of refusing credit for time served or by a longer sentence, or both) upon retrial doubtless intimidates persons held in prison under unconstitutional convictions from attempting to secure their right to a new trial. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

Appeal.—No appeal lies from a final judgment entered upon a petition and proceeding for post-conviction review under the Post-Conviction Hearing Act, review being available only upon application by the petitioner or by the State for a writ of certiorari. *Nolan v. State*, 1 N.C. App. 618, 162 S.E.2d 88 (1968).

Prerequisites to Review by Federal Court.—The power of a federal district court to consider a state prisoner's petition for writ of habeas corpus and to review the constitutionality of his state trial is conferred by 28 U.S.C. § 2254. In conferring that jurisdiction upon the federal courts, the Congress has specifically provided that this court shall not grant the writ unless the state prisoner (1) has exhausted remedies available in the courts of the state, or (2) there is no available state corrective process, or (3) there are circumstances rendering the state process ineffective to protect the rights of the prisoner. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

The federal habeas judge may in his discretion deny relief to an applicant who has deliberately by-passed the orderly procedure of State courts and in so doing has forfeited his State court remedies. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

Article Affords Review Only, etc.—

The inquiry in a post-conviction proceeding is whether there was a substantial denial of the constitutional rights of petitioners in the original criminal action in which they were convicted and whether a different result would likely have ensued had petitioners not been denied such rights. *Branch v. State*, 269 N.C. 642, 153 S.E.2d 343 (1967).

Burden Is on Petitioner to Show Denial of Constitutional Right.—In a proceeding under this article, the burden is upon the petitioner to show a denial of some right guaranteed to him by the Constitution of North Carolina or by the Constitution of the United States in the trial or investigatory procedures resulting in his conviction. *Branch v. State*, 269 N.C. 642, 153 S.E.2d 343 (1967).

Want of Formal and Sufficient Accusation.—When the court sentenced petitioner, who had been indicted for a violation of § 14-26 (carnal knowledge of female virgins between twelve and sixteen years of age), to imprisonment for a term of not less than twelve nor more than fifteen years upon his plea of guilty to a violation of § 14-22 (assault with intent to commit rape) when there was no formal and sufficient accusation against him for the offense to which he pleaded guilty, it would seem to be without precedent, and the sentence of imprisonment was a nullity, and violates petitioner's rights as guaranteed by N.C. Const. Art. I, § 17, and by § 1 of the 14th Amendment to the United States Constitution and must be vacated in post-conviction proceedings.

McClure v. State, 267 N.C. 212, 148 S.E.2d 15 (1966).

Exhaustion of a state procedure to a foregone conclusion is not a prerequisite to federal habeas corpus jurisdiction. It is well established that under such circumstances jurisdiction exists in the federal district court to entertain the petition for habeas corpus and to review the constitutionality of the trial and imprisonment. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

Where petitioner for habeas corpus in a federal court maintained that he was detained pursuant to an unconstitutional judgment based upon unconstitutional statutes, and he had raised this issue at his trial, and again on direct appeal, and the Supreme Court of North Carolina had passed upon his constitutional objections, it was not necessary for him to raise them again in State collateral proceedings, i.e., via the Post-Conviction Hearing Act. *Walker v. North Carolina*, 262 F. Supp. 102 (W.D.N.C. 1966).

Where accused has not sought review of his second trial and sentence pursuant to the North Carolina Post-Conviction Hearing Act, federal habeas corpus jurisdiction, if it exists, therefore depends upon the existence of circumstances rendering such process ineffective. Such circumstances exist where prior decisions of the Supreme Court of North Carolina foreclosing in the state courts accused's contentions that (a) he is entitled to credit for time served, and (b) that he cannot be more harshly punished at a second trial. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

Forcing a petitioner for habeas corpus in the federal court to present again to the state courts, in a proceeding under this section, claims which had already been considered and denied by those courts in habeas corpus proceedings would be an unwarranted, hyper-technical application of the exhaustion doctrine. The doctrine of exhaustion does not require that the petitioner himself be exhausted in repetitious litigation. *Whitley v. North Carolina*, 357 F.2d 75 (4th Cir. 1966).

In habeas corpus proceedings in a federal court, the State may waive petitioner's failure to exhaust available State court remedies under this article. *Kelly v. North Carolina*, 276 F. Supp. 200 (E.D.N.C. 1967).

When State Remedies Exhausted.—One who has proceeded under this article and been denied certiorari by the North Carolina Supreme Court has exhausted all pres-

ently available State remedies. *Anders v. Turner*, 379 F.2d 46 (4th Cir. 1967).

Effect of Declaring Trial a Nullity.—Once a trial has been declared a nullity in a post-conviction proceeding, this nullity cannot be resuscitated and made to serve as the basis for a sentence. When a trial is annulled, so is the sentence, and it cannot be reimposed without a new trial. *State v. Hollars*, 266 N.C. 45, 145 S.E.2d 309 (1965).

No Credit Allowed, etc.—

Under the law of North Carolina, it is plain that the fortunate recipient of a new trial may be (1) denied credit for all time served in prison under the vacated judgment and sentence imposed at the first trial, unless given the maximum sentence at the second trial, and/or (2) be given a longer sentence than that previously imposed, so long as it is within the maximum permitted by the statute. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

Denial of credit at a second trial for time served while in the de facto status of state prisoner is so fundamentally unfair as to constitute a violation of the due process and equal protection clauses of the Fourteenth Amendment of the federal Constitution. *Patton v. North Carolina*, 256 F. Supp. 225 (W.D.N.C. 1966).

The district court properly issued a writ of habeas corpus and ordered the release of petitioner for the reason that he had served the maximum term imposed on him at his original trial, notwithstanding that on retrial, after successful post-conviction attack, he was sentenced to a longer term. *Pearce v. North Carolina*, 397 F.2d 253 (4th Cir. 1968).

Method of Selecting Jury.—Petitioner for habeas corpus argued that the practice of obtaining a so-called "death-qualified" jury, by the allowance of successful challenge for cause of all persons with conscientious scruples against capital punishment, interfered with the "unbridled discretion" of the jury to recommend life imprisonment. This was a question of State law which the federal court considered settled adversely to petitioner's contention by *State v. Arnold*, 258 N.C. 563, 129 S.E.2d 229 (1963), and *State v. Childs*, 269 N.C. 307, 152 S.E.2d 453 (1967). *Crawford v. Bounds*, 395 F.2d 297 (4th Cir. 1968), holding that the method of selecting the jury violated the Fourteenth Amendment to the federal Constitution.

Applied in *State v. Stafford*, 267 N.C. 201, 147 S.E.2d 925 (1966); *State v. Wilson*, 269 N.C. 297, 152 S.E.2d 223 (1967);

Petway v. Stallings, 248 F. Supp. 991 (E.D.N.C. 1965); Tyler v. Croom, 264 F. Supp. 415 (E.D.N.C. 1967); Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967); McNeil v. North Carolina, 368 F.2d 313 (4th Cir. 1966); State v. Stafford, 274 N.C. 519, 164 S.E.2d 371 (1968).

Cited in State v. Rhinehart, 267 N.C. 470, 148 S.E.2d 651 (1966); State v. Conyers, 267 N.C. 618, 148 S.E.2d 569 (1966); State v. Sutton, 268 N.C. 165, 150 S.E.2d 50 (1966); Sligh v. North Carolina, 246 F. Supp. 865 (E.D.N.C. 1965); McNeil v. North Carolina, 248 F. Supp. 867 (E.D.N.C. 1965); Wells v. Stallings,

253 F. Supp. 748 (E.D.N.C. 1966); Creighton v. North Carolina, 257 F. Supp. 806 (E.D.N.C. 1968); Newsome v. Ross, 258 F. Supp. 671 (E.D.N.C. 1966); Fox v. North Carolina, 266 F. Supp. 19 (E.D.N.C. 1967); Gainey v. Turner, 266 F. Supp. 95 (E.D.N.C. 1967); Stem v. Turner, 370 F.2d 895 (4th Cir. 1966); Lassiter v. Turner, 279 F. Supp. 231 (E.D.N.C. 1968); Davis v. State, 273 N.C. 533, 160 S.E.2d 697 (1968); State v. Hamrick, 2 N.C. App. 227, 162 S.E.2d 567 (1968); Glover v. State, 3 N.C. App. 210, 164 S.E.2d 400 (1968); Aldridge v. State, 4 N.C. App. 297, 166 S.E.2d 485 (1969).

§ 15-218. Contents of petition; waiver of claims not alleged.—The petition shall identify the proceeding or trial in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated or in which he is illegally detained, and shall state that the questions raised have not heretofore been raised or passed upon by any court of competent jurisdiction. The petition shall have attached thereto affidavits, records or other evidence supporting its allegations or shall state why the same are not attached. The petition shall also identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition. Any claims of substantial denial of constitutional rights or of other error remediable under this article not raised or set forth in the original or any amended petition shall be deemed waived, unless the court, upon consideration of a subsequent petition, finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately asserted in the original or amended petition. (1951, c. 1083, s. 1; 1953, c. 675, s. 3; 1965, c. 352, s. 1; 1969, c. 877, s. 1.)

Editor's Note.—

The 1969 amendment added at the end of the last sentence the language beginning "unless the court."

A petitioner for habeas corpus in a federal court no longer had available a state remedy to vindicate the claimed denials of constitutional rights which could have been, but were not, raised in his application for post-conviction relief, made before his application for a writ of habeas cor-

pus, since the North Carolina statute on post-conviction relief clearly prohibits raising a ground in a successive petition which could have been raised earlier. Stem v. Turner, 370 F.2d 895 (4th Cir. 1966), commented on in 45 N.C.L. Rev. 1056 (1967).

Stated in State v. Green, 2 N.C. App. 391, 163 S.E.2d 14 (1968).

Cited in State v. Case, 268 N.C. 330, 150 S.E.2d 509 (1966).

§ 15-219. Petitioner unable to pay costs or procure counsel.—If the petition alleges that the petitioner is without funds to pay the costs of the proceeding, and is unable to give a costs bond with sureties for the payment of the costs for the proceeding and is unable to furnish security for costs by means of a mortgage or lien upon property to secure the costs, the court may order that the petitioner be permitted to proceed to prosecute such proceeding without providing for the payment of costs. If the petitioner is an indigent person, the provisions of chapter 7A, subchapter IX are applicable. (1951, c. 1083, s. 1; 1963, c. 1180; 1965, c. 352, s. 1; 1969, c. 1013, s. 9.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted the present second sentence for the former second, third and fourth sentences, relating to appointment of counsel.

Applied in State v. Fowler, 266 N.C. 528, 146 S.E.2d 418 (1966); McClure v. State, 267 N.C. 212, 148 S.E.2d 15 (1966).

§ 15-220. Answer of the State; amendments; costs of records.—Unless the reviewing judge shall have ordered an earlier date, within 30 days after the date of delivery of the petition to the solicitor of the district, or within such further time as the court may fix, the solicitor shall answer or move to dismiss on behalf of the State. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. The court may, in its discretion, grant leave at any stage of the proceeding prior to entry of judgment to withdraw the petition. The court may, in its discretion make such orders as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time for filing any pleading other than the original petition, as shall seem to the court appropriate, just and reasonable.

If it shall appear to the court that records, including a transcript of testimony, of the proceedings which resulted in the conviction of petitioner are necessary for a proper determination of the proceedings, the judge shall, upon finding that the petitioner is indigent or upon motion of the State, order the State of North Carolina in counties which do not yet have district court to pay the necessary cost of obtaining the records specified by the judge. In counties in which a district court is established the State is liable for payment of the costs assessed in this paragraph. (1951, c. 1083, s. 1; 1965, c. 352, s. 1; 1969, c. 877, s. 2; c. 1013, s. 10; c. 1296.)

Editor's Note.—

The first 1969 amendment deleted the former fourth sentence, relating to the effect of withdrawal of a petition as waiver of any claim of denial of constitutional rights or other errors.

The second 1969 amendment, effective July 1, 1969, inserted, in the first sentence of the second paragraph, "in counties which do not yet have district court," and added the second sentence of the second paragraph.

§ 15 221. Hearing.

Nature of Hearing.—A post-conviction hearing is a post-conviction remedy to determine whether a defendant was deprived of any constitutional right in his original trial. This is a question of law for the court. *State v. Gainey*, 265 N.C. 437, 144 S.E.2d 249 (1965).

A post-conviction hearing is not a trial. *State v. Gainey*, 265 N.C. 437, 144 S.E.2d 249 (1965).

It is not designed to be a second day in court. *State v. Gainey*, 265 N.C. 437, 144 S.E.2d 249 (1965).

Nor is it a substitute for appeal. *State v. Gainey*, 265 N.C. 437, 144 S.E.2d 249 (1965).

§ 15-222. Review by application for certiorari.—Any final judgment entered upon such a petition and proceeding may be reviewed by the Court of Appeals of North Carolina upon application by the petitioner or by the State for a writ of certiorari brought within 60 days from the entry of the judgment in such proceeding.

If the judge is satisfied that a petitioner is unable to procure the records required for an adequate and effective consideration by the Court of Appeals of an application for writ of certiorari, he shall order the State of North Carolina to make available such records, including the transcript.

The third 1969 amendment, effective July 1, 1969, substituted "State of North Carolina" for "county" in the first sentence of the second paragraph.

Applied in *State v. Hollars*, 266 N.C. 45, 145 S.E.2d 309 (1965).

Quoted in *Aldridge v. State*, 4 N.C. App. 297, 166 S.E.2d 485 (1969).

Cited in *State v. Case*, 268 N.C. 330, 150 S.E.2d 509 (1966).

There is no requirement that a defendant be present at a post-conviction hearing. *State v. Gainey*, 265 N.C. 437, 144 S.E.2d 249 (1965).

Order Appointing Counsel to Perfect Appeal.—In a hearing under the Post-Conviction Hearing Act, a finding by the court that an indigent defendant had been denied right of appeal to the Supreme Court fully supports an order appointing counsel to perfect an appeal and directing the county to furnish a transcript of the trial. *State v. Staten*, 271 N.C. 600, 157 S.E.2d 225 (1967).

The law of this State governing the application, granting and disposition of writs of certiorari shall be applicable to any application for writ of certiorari brought under the provisions of this article for the purpose of seeking a review of such judgment or proceeding. (1951, c. 1083, s. 1; 1965, c. 352, s. 1; 1967, c. 108, s. 11; c. 523, ss. 1, 2; 1969, c. 1013, s. 11; c. 1296.)

Editor's Note.—

Session Laws 1967, c. 108 and c. 523, s. 2, substituted "Court of Appeals" for "Supreme Court."

The first 1969 amendment, effective July 1, 1969, deleted the former second, third and fourth sentences of the first paragraph, relating to appointment of counsel, and also deleted the second paragraph. The deleted sentences and paragraph had been added by Session Laws 1967, c. 523, s. 1.

The second 1969 amendment, effective July 1, 1969, substituted "State of North Carolina" for "county" in the second paragraph.

Notwithstanding its deletion by the first 1969 amendment, the second paragraph of the section, as amended by the second 1969 amendment, appears in the section as set out above.

No appeal lies from an order entered in a post-conviction hearing denying defendant a new trial, but such an order may be reviewed only upon allowance of a writ of certiorari. *In re McBride*, 267 N.C. 93, 147 S.E.2d 597 (1966).

No appeal lies from a final judgment entered upon a petition and proceeding for post-conviction review under the North Carolina Post-Conviction Hearing Act, re-

view being available only upon application by the petitioner or by the State for a writ of certiorari. *Nolan v. State*, 1 N.C. App. 618, 162 S.E.2d 88 (1968); *State v. Green*, 2 N.C. App. 391, 163 S.E.2d 14 (1968); *Aldridge v. State*, 4 N.C. App. 297, 166 S.E.2d 485 (1969).

The State, as well as a prisoner, may petition for certiorari to review a final judgment in proceedings under the Post-Conviction Hearing Act. *State v. White*, 274 N.C. 220, 162 S.E.2d 473 (1968).

That Defendant Is on Parol Does Not Affect Right to Review.—The fact that a defendant is on parol at the time of his application for certiorari does not affect his right to review by the Supreme Court (now Court of Appeals), since conditions of parol are a restraint upon his liberty not shared by the public generally. *State v. Rhinehart*, 267 N.C. 470, 148 S.E.2d 651 (1966).

Applied in *Patton v. Ross*, 267 F. Supp. 387 (E.D.N.C. 1967).

Cited in *State v. Case*, 268 N.C. 330, 150 S.E.2d 509 (1966); *Kelly v. North Carolina*, 276 F. Supp. 200 (E.D.N.C. 1967); *Lassiter v. Turner*, 279 F. Supp. 231 (E.D.N.C. 1968).

Chapter 17.

Habeas Corpus.

Article 2.

Application.

Sec.

17-6. To judge of appellate division or superior court in writing.

Article 7.

Habeas Corpus for Custody of Children in Certain Cases.

Sec.

17-39 to 17-40. [Repealed.]

ARTICLE 2.

Application.

§ 17-3. Who may prosecute writ.

Cited in *State v. Hamrick*, 2 N.C. App. 227, 162 S.E.2d 567 (1968).

§ 17-6. To judge of appellate division or superior court in writing.—

Application for the writ shall be made in writing, signed by the applicant—

- (1) To any one of the justices or judges of the appellate division.
- (2) To any one of the superior court judges, either at term time or in vaca-

tion. (1868-9, c. 116, s. 4; Code, s. 1626; Rev., s. 1824; C. S., s. 2208; 1969, c. 44, s. 41.)

Editor's Note.—Prior to the 1969 amendment, subdivision (1) read "To any one of the justices of the Supreme Court."

§ 17-7. Contents of application.

Stated in *State v. Green*, 2 N.C. App. 391, 163 S.E.2d 14 (1968).

§ 17-8. Issuance of writ without application.—When the appellate division or superior court division, or any judge of either division, has evidence from any judicial proceeding before such court or judge that any person within this State is illegally imprisoned or restrained of his liberty, it is the duty of said court or judge to issue a writ of habeas corpus for his relief, although no application be made for such writ. (1868-9, c. 116, s. 10; Code, s. 1632; Rev., s. 1826; C. S., s. 2210; 1969, c. 44, s. 42.)

Editor's Note.—The 1969 amendment substituted "When the appellate division or superior court division, or any judge of either" for "When the Supreme or superior court, or any judge of either" at the beginning of the section.

ARTICLE 7.

Habeas Corpus for Custody of Children in Certain Cases.

§ 17-39: Repealed by Session Laws 1967, c. 1153, s. 1, effective October 1, 1967.

Cross References.—

As to action or proceeding for custody of minor child, see §§ 50-13.1 to 50-13.8.

§ 17-39.1: Repealed by Session Laws 1967, c. 1153, s. 1, effective October 1, 1967.

Cross Reference.—

As to action or proceeding for custody of minor child, see §§ 50-13.1 to 50-13.8.

§ 17-40: Repealed by Session Laws 1967, c. 1153, s. 1, effective October 1, 1967.

Cross Reference.—As to action or proceeding for custody of minor child, see §§ 50-13.1 to 50-13.8.

ARTICLE 8.

Habeas Corpus Ad Testificandum.

§ 17-41. Authority to issue the writ.—Every court of record has power, upon the application of any party to any suit or proceeding, civil or criminal, pending in such court, to issue a writ of habeas corpus, for the purpose of bringing before the said court any prisoner who may be detained in any jail or prison within the State, for any cause, except a prisoner under sentence for a capital felony, to be examined as a witness in such suit or proceeding in behalf of the party making the application.

Such writ of habeas corpus may be issued by any justice of the peace or clerk of the superior court, upon application as provided in this section, to bring any person confined in the jail or prison of the same county where such justice or clerk may reside, to be examined as a witness before such justice or clerk.

In cases where the testimony of any prisoner is needed in a proceeding before a justice of the peace, or a clerk, and such person is confined in a county in which

such justice or clerk does not reside, application for habeas corpus to testify may be made to any justice or judge of the General Court of Justice. (1868-9, c. 116, ss. 37, 38; Code, ss. 1663, 1664; Rev., ss. 1855, 1856; C. S., s. 2243; 1969, c. 44, s. 43.)

Editor's Note.—The 1969 amendment substituted "justice or judge of the General Court of Justice" for "judge of the Su-

preme or superior court" at the end of the section.

Chapter 18.

Regulation of Intoxicating Liquors.

Article 3.

Alcoholic Beverage Control Act of 1937.

Sec.

- 18-37. State Board of Alcoholic Control; membership; compensation.
- 18-38. Appointment of members; powers and duties of chairman; term of appointment.
- 18-38.1. Authority of the Governor to direct closing of A.B.C. stores.
- 18-39.2. Special peace officers; powers and jurisdiction.
- 18-40. [Repealed.]
- 18-49.6. Sale, possession, transportation of alcoholic beverages in excess of one gallon; permit required.
- 18-49.7. Purchase-transportation permit.
- 18-49.8. Persons authorized to issue permits.
- 18-49.9. Form of permits.
- 18-49.10. Penalty for violation of §§ 18-49.6 through 18-49.9.
- 18-51. Possession and consumption of alcoholic beverages at designated places.
- 18-51.1. Exceptions.

Article 4.

Beverage Control Act of 1939.

Sec.

- 18-78.2. Presumption of knowledge of age of purchaser.
- 18-79. State license; sale of "short-filled" packages by manufacturers to employees.
- 18-82. By whom excise taxes payable.
- 18-85.2. Additional tax on spirituous liquors.
- 18-88.2. Exemption of beer, etc., sold to oceangoing vessels.
- 18-90.1. Sale to or purchase by minors.

Article 5.

Fortified Wine Control Act of 1941.

- 18-99.1. Manufacturers and bottlers of fortified and sweet wines.

Article 12.

Additional Powers of State Board over Wine and Malt Beverages.

- 18-129.1. Authority of the Governor to limit sale of wine and malt beverages.

ARTICLE 1.

The Turlington Act.

§ 18-1. Definitions; application

The Turlington Act remains, etc.—

The Turlington Act is still the primary law in every area which has not elected to come under the A.B.C. Act (§ 18-36 et seq.). *D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).*

Where liquor stores have been established under the A.B.C. Act (§ 18-36 et seq.), the Turlington Act is the law except to the extent it has been modified or repealed by the A.B.C. Act. *D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).*

The A.B.C. Act (§ 18-36 et seq.) contains no clause specifically repealing the Turlington Act or any other provisions of the law relating to alcoholic beverages. It therefore repealed only those laws which

of article.

are "utterly irreconcilable" with it. *D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).*

The Two Acts, etc.—

The Turlington Act and the A.B.C. Act (§ 18-36 et seq.) constitute the body of State law relating to the purchase, possession, and sale of intoxicating liquor, and must be construed in pari materia. *D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).*

Beer and the other beverages defined in § 18-64 are exempted from the Turlington Act. *D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).*

Unlawful Transportation and Consumption of Liquor.—It is unlawful for a person in an area which has elected to come

under the A.B.C. Act (§ 18-36 et seq.) to transport to a restaurant, a private club, or other public place, intoxicating liquor for consumption on the premises, notwithstanding the liquor may be concealed from public view *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the amendment of § 18-51 by c. 222, Session Laws 1967.

Act Does Not Infringe on Right to Engage in Restaurant Business. — The constitutional right to earn a livelihood by en-

gaging in the restaurant business is not infringed by either the *Turlington Act* or the A.B.C. Act (§ 18-36 et seq.). *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Act Applicable to Davidson County. — Davidson County has never come within the provisions of the Alcoholic Beverage Control Act of 1937. Thus, the *Turlington Act* of 1933 remains the primary law there. *State v. Anderson*, 265 N.C. 548, 144 S.E.2d 581 (1965).

§ 18-2. Manufacture, sale, etc., etc., forbidden; construction of law; nonbeverage liquor.

Applied in *State v. Anderson*, 265 N.C. 548, 144 S.E.2d 581 (1965).

Stated in *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Cited in *Carter v. State Bd. of Alcoholic Control*, 274 N.C. 484, 164 S.E.2d 1 (1968).

§ 18-4. Advertising, etc., of utensils, etc., for use in manufacturing liquor.

Applied in *State v. Little*, 265 N.C. 440, 144 S.E.2d 282 (1965).

§ 18-6. Seizure of liquor, equipment and materials, or conveyance; arrests; sale of property. — When any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in any wagon, buggy, automobile, water or aircraft, or other vehicle, it shall be his duty to seize any and all intoxicating liquor, and any and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, found therein being transported contrary to law. Whenever intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, transported or possessed illegally, shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air or watercraft, or any other conveyance, and shall arrest any person in charge thereof: Provided, that the transportation of the legal amount of alcoholic beverages, as defined in G.S. 18-60, in the passenger area of the motor vehicle with the cap or seal on the container or containers open or broken, shall not be ground for confiscation of the motor vehicle. Such officer shall at once proceed against the person arrested, under the provisions of this article, in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. All liquor seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed; provided, that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it. Unless the claimant can show that the property seized is his property, and that the same was used in transporting liquor, or equipment, or materials designed or intended for use in the manufacture of intoxicating liquor, without his knowledge and consent, with the right on the part of the claimant to have a jury pass upon his claim, the court shall order a sale by public auction of the property

seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used for illegal transportation of liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, and shall pay the balance of the proceeds to the treasurer or the proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county. All liens against property sold under the provisions of this section shall be transferred from the property to be proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or aircraft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the treasurer or proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county: Provided, that nothing in this section shall be construed to authorize any officer to search any automobile or other vehicle or baggage of any person without a search warrant duly issued, except where the officer sees or has absolute personal knowledge that there is intoxicating liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in such vehicle or baggage.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section, and provided further, that where such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition and no one shall be found claiming said vehicle, water or aircraft, or automobile, then in lieu of selling the same, after advertisement, and if no claimant shall appear after the last publication of the advertisement, then the court may order that the vehicle, water or aircraft, or automobile, be turned over to a governmental agency or public official within the territorial jurisdiction of the court, as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk. (1923, c. 1, s. 6; C. S., s. 3411(f); 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1; 1969, c. 789.)

Editor's Note. — The 1969 amendment added the proviso at the end of the second sentence.

§ 18-11. Possession prima facie evidence of keeping for sale. — The possession of liquor by any person not legally permitted under this article to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this article. But it shall not be unlawful to

possess liquor in one's private dwelling while the same is occupied and used by him as his dwelling only, provided such liquor is for use only for the personal consumption of the owner thereof, and his family residing in such dwelling, and of his bona fide guests when entertained by him therein. It shall not be unlawful to possess liquor at such other places as are authorized by other provisions of chapter 18, North Carolina General Statutes. (1923, c. 1, s. 10; C. S., s. 3411(j); 1967, c. 222, s. 4.)

Editor's Note.—

The 1967 amendment added the last sentence.

The law with reference to the possession of whiskey or similar intoxicating beverages is this: Whether the area be wet or dry, conforming or nonconforming, a person may legally possess alcoholic liquors as defined by § 18-60 only in his private dwelling as provided by this section and while transporting not in excess of one gallon purchased out of the State or from an A.B.C. store within the State to his dwelling as provided by § 18-49 and § 18-58. This has been the law since the passage of the A.B.C. Act of 1937. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the amendment of § 18-51 by c. 222, Session Laws 1967.

This section and § 18-32 (2) were modified by § 18-49. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

§ 18-15. Clubrooms and other places for keeping, etc., of liquor.—No corporation, club, association, or person shall directly or indirectly keep or maintain, alone or by association with others, or by any other means, or shall in any manner aid, assist, or abet others in keeping or maintaining a clubroom or other place where intoxicating liquor is received, kept, or stored for barter, sale, exchange, distribution, or division among the members of any such club or association or aggregation of persons, or to or among any other persons by any means whatever, or shall act as agents in ordering, procuring, buying, storing, or keeping intoxicating liquor for any such purpose; provided, however, this section shall not prohibit the storage of any form of intoxicating liquor that is specifically authorized or permitted by article 3, the Alcoholic Beverage Control Act of 1937, as amended. (1923, c. 1, s. 14; C. S., s. 3411(n); 1967, c. 222, s. 5.)

Cross Reference.—See § 18-51.

Editor's Note.—The 1967 amendment added the proviso.

§ 18 18. Serving liquor with meals.

Cross Reference.—See § 18-51.

Scope of Prohibition.—The prohibition of this section extends to any person. It thus includes the restaurateur and his employees; the host who entertains his guests at a restaurant or club; and the patron who brings his bottle and serves himself.

none of whom may legally transport the liquor to the restaurant in the first place. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the amendment of § 18-51 by c. 222, Session Laws 1967.

§ 18 20. Grain alcohol for use in medicine or surgery; manufacture or sale of cider.

Stated in *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

ARTICLE 2.

*Miscellaneous Regulations.***§ 18-32. Keeping liquor for sale; evidence.**

(2) The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; provided, however, it shall not be unlawful to possess spirituous liquors where specifically authorized or permitted by article 3, the Alcoholic Beverage Control Act of 1937, as amended; or

(1967, c. 222, s. 6.)

Cross Reference.—See § 18-51.

Editor's Note.—

The 1967 amendment inserted the proviso in subdivision (2).

As the rest of the section was not changed by the amendment, only subdivision (2) is set out.

Section 18-11 and subdivision (2) of this section were modified by § 18-49. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendment to subdivision (2).

Possession for Use of Owner.—

The law permits an individual to possess in his home an unlimited quantity of tax-paid intoxicating liquor for his own use and that of his bona fide guests, but the possession of more than one gallon is prima

facie evidence that such liquor is for the purpose of sale. *State v. Causby*, 269 N.C. 747, 153 S.E.2d 467 (1967).

Possession of More than Five Gallons of Beer.—Although any individual may possess beer as defined by § 18-64 for his own use without restriction or regulation as provided by § 18-66, defendant's possession of more than five gallons of beer in sixty king-size cans (7½ gallons) constituted *prima facie* evidence under this section that he had it for the purposes of sale. *State v. Causby*, 269 N.C. 747, 153 S.E.2d 467 (1967).

Applied in *State v. Anderson*, 265 N.C. 548, 144 S.E.2d 581 (1965).

Quoted in *Williams v. United States*, 297 F. Supp. 1030 (E.D.N.C. 1969).

§ 18-35. Federal license as evidence.

Quoted in *Williams v. United States*, 297 F. Supp. 1030 (E.D.N.C. 1969).

§ 18-35.1. Unlawful to obtain, possess, etc., federal license to manufacture, purchase or handle intoxicating liquor.

Quoted in *Williams v. United States*, 297 F. Supp. 1030 (E.D.N.C. 1969).

ARTICLE 3.

*Alcoholic Beverage Control Act of 1937.***§ 18-36. Purposes of article.**

The Alcoholic Beverage Control Act, etc.—

The Burlington Act is still the primary law in every area which has not elected to come under the A.B.C. Act. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Where liquor stores have been established under the A.B.C. Act, the Burlington Act is the law except to the extent it has been modified or repealed by the A.B.C. Act. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

The A.B.C. Act contains no clause specifically repealing the Burlington Act or any other provisions of the law relating to alcoholic beverages. It therefore re-

pealed only those laws which are "utterly irreconcilable" with it. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

The Two Acts, etc.—

The Burlington Act and the A.B.C. Act constitute the body of State law relating to the purchase, possession, and sale of intoxicating liquor and must be construed in *pari materia*. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Purpose Is to Control Every Facet of Intoxicating Liquor.—The purpose of the Alcoholic Beverage Control Act of 1937 and the many local acts of regulation and prohibition is to control every possible

facet of intoxicating liquor. *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

And Not to Place State in Business Venture for Profit.—It was not the intent of the legislature in passing the Alcoholic Beverage Control Act of 1937 to place the sovereign State in a "business venture for profit" for the purpose of dispensing a product to its people which is recognized as a cause of crime, cruelty, indolence,

neglect and poverty. *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

Turlington Act Applicable to Davidson County.—Davidson County has never come within the provisions of the Alcoholic Beverage Control Act of 1937. Thus, the Turlington Act of 1933 remains the primary law there. *State v. Anderson*, 265 N.C. 548, 144 S.E.2d 581 (1965).

§ 18-37. State Board of Alcoholic Control; membership; compensation.—A State Board of Alcoholic Control is hereby created, and shall consist of a chairman and two associate members. The chairman and associate members of the Board shall be men well known for their character, ability, and business acumen. The chairman of the Board shall devote his full time to his official duties. He shall receive a salary to be fixed by the Governor, subject to the approval of the Advisory Budget Commission, together with necessary traveling expenses allowed under the general law. The two associate members of the Board shall receive no compensation for their services except the per diem, subsistence and travel allowances provided for members of similar State boards and commissions by chapter 138 of the General Statutes. (1937, c. 49, s. 2; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1965, c. 1102, s. 1; 1969, c. 294, s. 1.)

Editor's Note.—

The 1969 amendment rewrote this section. Section 3 of the amendatory act provides: "The terms of office of the incumbent members and the Director of the State

Board of Alcoholic Control shall terminate on the effective date of this act." The act was ratified April 23, 1969, and made effective on the fifth day following the date of ratification.

§ 18-38. Appointment of members; powers and duties of chairman; term of appointment.—The chairman and the associate members of the State Board of Alcoholic Control shall be appointed by the Governor, and shall serve at the pleasure of the Governor. The Governor shall fill any vacancy arising on the State Board by appointment of a successor, to serve at the pleasure of the Governor. The chairman of the Board shall have such powers and perform such duties as the Board shall prescribe, including the authority to appoint, promote, demote and discharge all subordinate officers and employees of the State Board of Alcoholic Control, and they shall perform such duties as the chairman may assign. Except as the State Board may provide otherwise, the chairman of the Board shall have all the powers and duties heretofore imposed upon the Director of the State Board of Alcoholic Control. (1937, c. 49, s. 3; 1963, c. 916, s. 1; 1965, c. 1102, s. 2; 1969, c. 294, s. 2.)

Editor's Note.—

The 1969 amendment rewrote this section, which formerly related to the Director of the State Board of Alcoholic Control. Section 3 of the amendatory act provides: "The terms of office of the incum-

bent members and the Director of the State Board of Alcoholic Control shall terminate on the effective date of this act." The act was ratified April 23, 1969, and made effective on the fifth day following the date of ratification.

§ 18-38.1. Authority of the Governor to direct closing of A.B.C. stores.—When the Governor finds that a state of emergency, as defined in § 14-288.1, exists anywhere within the State, he may order the closing of county and municipal liquor stores in all or any portion of the State for the period of the emergency. His order shall be directed to the chairman of the State Board of Alcoholic Control. The express authority granted by this section is not intended to limit any other authority, express or implied, to order the closing of these stores. (1969, c. 869, s. 4.)

§ 18-39. Powers and authority of Board.

(3) To fix the retail prices of all alcoholic beverages sold in county and municipal liquor stores at such levels as shall promote the temperate use of such beverages and as may facilitate policing, which price shall be uniform throughout the State, to compute the taxes levied by G.S. 18-85 on the retail prices so fixed, to determine the total prices of all such alcoholic beverages which total price shall be the sum of the retail price plus the tax levied by G.S. 18-85, and to notify the stores periodically of such prices. The State Board of Alcoholic Control shall cause the several county and municipal alcoholic boards of control to add to the established retail prices of all alcoholic beverages sold in said county and municipal liquor stores as provided above the sum of five cents (5¢) per bottle on every bottle of alcoholic beverages sold in said stores, which shall be in addition to the retail prices of all alcoholic beverages as set by the State Board of Alcoholic Control, which five cents (5¢) per bottle increase in the retail prices of alcoholic beverages sold by county or municipal liquor stores shall not be subject to the tax levied in G.S. 18-85, but the clear proceeds of the additional retail price of five cents (5¢) per bottle as provided above shall be remitted to the State Treasurer, accompanied by forms or reports to be prescribed and furnished by the State Board of Alcoholic Control, which remittances shall be placed in the general fund, and shall be subject to appropriation by the General Assembly to the same degree as any other moneys deposited in said general fund. Said reports and remittances of the five cents (5¢) per bottle as herein provided shall be made monthly by the local boards on or before the 15th day of the succeeding month.

(15) To promulgate rules and regulations for the control and use of alcoholic beverages pursuant to the provisions of G.S. 18-51, and each subdivision thereof, to the end that said section be strictly construed to control the dispensation of alcoholic beverages in the exercise of the police power of this State; to establish forms and procedures for receiving applications and granting permits, and for suspension and revocation, hearing and reviews, with respect to any person, association or corporation that seeks, obtains or holds a permit for any purpose authorized by G.S. 18-51, and each subdivision thereof; to apply to this article of chapter 18, the Statutes, rules and regulations provided for under article 4, chapter 18, of the General Statutes of North Carolina, insofar as they are applicable; to issue, renew, suspend or revoke any temporary or annual permit required pursuant to the provisions of G.S. 18-51, and each subdivision thereof; and from time to time to adopt, amend or repeal reasonable rules and regulations for the purpose of carrying out the provisions of this article, but not inconsistent herewith which rules and regulations shall become effective on the tenth day after adoption and the filing of a certified copy thereof in the office of the Secretary of State. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1961, c. 956; 1963, c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1.)

Local Modification.—City of Concord: 1967, c. 195; 1969, c. 221; city of Marshall: 1969, c. 991; town of Angier: 1969, c. 626; town of Bessemer City: 1969, c. 77; town of Biscoe: 1969, c. 145; town of Candor: 1969, c. 145; town of Garland: 1969, c. 144; town of Lincolnton: 1967, c. 603; 1969, c. 230; town of Mount Gilead:

1969, c. 145; town of Mt. Pleasant: 1967, c. 196; 1969, c. 220; town of Roseboro: 1963, c. 48; 1967, c. 600; 1969, c. 86; town of Star: 1969, c. 145, town of Sunset Beach: 1969, c. 734; town of Troy: 1969, c. 145; incorporated municipalities in Cleveland, Rockingham and Stokes counties: 1969, c. 832.

Editor's Note.—

The first 1967 amendment added subdivision (15).

The second 1967 amendment added "and shall be subject to appropriation by the General Assembly to the same degree as any other moneys deposited in said general

fund" at the end of the second sentence in subdivision (3).

As only subdivisions (3) and (15) were affected by the amendments, the rest of the section is not set out.

Quoted in Gardner v. City of Reidsville, 269 N.C. 581, 153 S.E.2d 139 (1967).

§ 18-39.2. Special peace officers; powers and jurisdiction.—(a) Any regular employee of the State Board of Alcoholic Control commissioned as a special peace officer shall have the right to arrest with warrant any person violating the provisions of chapter 18 of the General Statutes and shall have power to pursue and arrest without warrant any person violating in his presence any of the provisions of chapter 18 and any breach of the peace including public drunkenness connected to or associated with the enforcement of the provisions of chapter 18. All special peace officers appointed by the State Board of Alcoholic Control shall have state-wide jurisdiction in enforcing the provisions of chapter 18.

(b) Within their respective jurisdictions, all sheriffs, deputy sheriffs, municipal police and local alcoholic beverage control officers shall have authority to investigate the operation of premises licensed under the provisions of G.S. 18-51 (3), (4) and (5), and to procure evidence with respect to violations of this article, or any rule or regulation promulgated pursuant thereto. These law-enforcement officers shall have the right to enter the licensed premises in the performance of their duties at any hour of the day or night. (1961, c. 645; 1963, c. 426, s. 2; 1967, c. 868.)

Editor's Note.—

The 1967 amendment designated the

former provisions of this section as subsection (a) and added subsection (b).

§ 18-40: Repealed by Session Laws 1969, c. 294, s. 4.

Editor's Note.—The repealing act was ratified April 23, 1969, and made effective on the fifth day following the date of ratification.

§ 18-41. County boards of alcoholic control.

Local Modification.—Town of Mount Airy: 1969, c. 46.

§ 18-45. Powers and duties of county boards.—The said county boards shall each have the following powers and duties:

- (1) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.
- (2) Power to buy and to have in its possession and to sell alcoholic beverages within its county.
- (3) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.
- (4) To prescribe and regulate and direct the duties and services of all employees of said county board.
- (5) To fix the hours for the opening and closing of stores operated by it. No store, however, shall be permitted to remain open between the hours of nine o'clock P.M. and nine o'clock A.M.
- (6) To require any county stores to close on such days as it may designate, but all stores in any county operating under the provisions of this article shall remain closed on Sundays, election days, New Year's Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving and Christmas Day.
- (7) To import, transport, receive, purchase, sell and deliver and have in its possession for sale for present and future delivery alcoholic beverages.
- (8) To purchase or lease property, furnish and equip buildings, rooms and

accommodations as and when required for the storage and sale of alcoholic beverages and for distribution to all county stores within said county.

- (8a) To sell at public auction, as provided by law, any real or personal property which the board, in its discretion, deems unnecessary for the proper operation of its stores.
- (9) To borrow money, guarantee the payment thereof and the interest thereon, in such manner as may be required or permitted by law, and to issue, sign, endorse and accept checks, promissory notes, bills of exchange and other negotiable instruments and to do all such other and necessary things as may be required or may be convenient in the conduct of liquor stores in its county.
- (10) To investigate and aid in the prosecution of violations of this article and other liquor laws, by whatever name called, and to seize alcoholic beverages in said county sold, kept, imported or transported illegally and to apply for confiscation thereof and to cooperate in the prosecution of offenders in any court in said county.
- (11) To regulate and to prescribe rules and regulations that may be necessary or feasible for the obtaining of purity in all alcoholic beverages, including true statements of contents and the proper labeling thereof.
- (12) To require liquor stores to sell alcoholic beverages at the prices fixed by the State Board of Alcoholic Control, and to prescribe to whom the same may be sold.

The provisions of this article shall not apply to ethyl alcohol intended for use and/or used for the following purposes:

For scientific, chemical, mechanical, industrial, medicinal and culinary purposes.

For use by those authorized to procure the same tax free, as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes.

In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

- (13) To exercise the power to buy, purchase and sell and to fix the prices at which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said board the power to purchase or sell or deal in alcoholic beverages which contain less than five per centum of alcohol by weight.
- (14) To locate stores in its county and to provide for the management thereof and to appoint and employ at least one person for each store conducted by it, who shall be known as "manager" thereof. The duty of such manager shall be to conduct the said store under directions of the county board and to carry out the law applying thereto, and such manager shall give bond for the faithful performance of his duties in such sum as may be fixed by said county board, with sufficient corporate surety and said surety, or sureties thereon, shall be approved by the said county board as a part of the qualifications of such manager for his appointment, and the said county board shall have the right to sue on said bond and to recover for all failures on the part of said manager faithfully to perform his duties as such manager, to the extent of any loss occasioned by such manager on his part, but as against the surety, or sureties, thereon, such aggregate recovery, or recoveries, shall not exceed the penalty of said bond.
- (15) To expend for law enforcement a sum not less than five percent nor more than ten percent of the total profits to be determined by quarterly

audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. The persons so appointed shall, after taking the oath prescribed by law for the peace officers, have the same powers and authorities within their respective counties as other peace officers. And any person so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such offender therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officers. Any law-enforcement officer appointed by such county boards and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition law therein, and while so acting shall have such powers as a peace officer as are granted to him in his own county and be entitled to all the protection provided for said officer while acting in his own county.

In addition, any county or municipal board is authorized, in its discretion, to expend not more than five percent (5%) of its total profits, to be determined by quarterly audits, for education and research as to the causes and effects of alcoholism or the excessive use of alcoholic beverages and for the rehabilitation of alcoholics. Expenditures for the purposes specified in this paragraph may be made, in the discretion of the board, either for programs carried on by the board or as appropriations to nonprofit corporations or agencies sponsoring or engaging in such education, research or rehabilitation.

(16) To discontinue the operation of any store in its county whenever it shall appear to said board that the operation thereof is not sufficiently profitable to justify a continuance of its operation, or when, in its opinion, the operation of any store is inimical or hurtful to the morals or welfare of the community in which it is operated, or when said county board may be directed to close any store by the State Board.

All the powers and duties herein conferred upon county boards, or required of them, shall be subject to the powers herein conferred upon the State Board and whenever or wherever herein the State Board has been given power to approve or disapprove anything in respect to county stores or county boards, then no power on the part of the county boards and no act of any county board shall be exercisable or valid until and unless the same has been approved by the State Board. (1937, c. 49, s. 10; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902.)

Local Modification.—Catawba, as to subdivision (15): 1967, c. 288, amending 1953, c. 784; Dare, as to subdivision (15): 1967, c. 318; Gates: 1969, c. 337; Wilson, as to subdivision (15): 1967, c. 147; city of Concord, as to subdivision (15): 1969, c. 221; city of Marshville, as to subdivision (15): 1969, c. 991; town of Bessemer City, as to subdivision (15): 1969, c. 77; town of Biscoe, as to subdivision (15): 1969, c. 145; town of Candor, as to subdivision (15): 1969, c. 145; town of Garland, as to subdivision (15): 1969, c. 144; town of Lincolnton, as to subdivision (15): 1969, c. 230; town of Mount Airy: 1969, c. 46; town of Mount Gilead, as to subdivision (15): 1969, c. 145; town of Mt. Pleasant, as

to subdivision (15): 1969, c. 220; town of Roseboro, as to subdivision (15): 1969, c. 86; town of Star, as to subdivision (15): 1969, c. 145; town of Troy, as to subdivision (15): 1969, c. 145.

Cross Reference.—As to rehabilitation of alcoholics, see §§ 122-35.13 to 122-35.17.

Editor's Note.—

The 1967 amendment inserted "and research" near the beginning of the former second sentence of subdivision (15).

The first 1969 amendment added subdivision (8a).

The second 1969 amendment deleted the former second sentence of the first paragraph of subdivision (15), relating to expenditures for education and research, and

added the present second paragraph of subdivision (15).

Cited in *Gardner v. City of Reidsville*,

269 N.C. 581, 153 S.E.2d 139 (1967); *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213 (1968).

§ 18-46. No sales except during hours fixed by county boards; sales to minors, habitual drunkards, etc.; discretion of managers and employees; list of persons convicted of drunkenness, etc.; unlawful to buy for person prohibited.

Quoted in *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

§ 18-47. Drinking upon premises prohibited; stores closed on Sundays, election days, etc.

Legislative Purpose.—In this section and § 18-51, the legislature was giving attention to specific places where it obviously thought special hazards existed. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to § 18-51.

This section and § 18-51 define additional criminal offenses. *D & W, Inc. v. City of*

Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to § 18-51.

Such sections were designed, *inter alia*, to prevent drinking before driving. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to § 18-51.

§ 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence; counterfeit or unauthorized stamps.

Possession Unlawful, etc.—

In accord with original. See *State v. Leach*, 272 N.C. 733, 158 S.E.2d 782 (1968).

Possession May Be Actual, etc.—

In accord with 1st paragraph in original. See *State v. Leach*, 272 N.C. 733, 158 S.E.2d 782 (1968).

No search warrant is required where the officer sees or has absolute personal knowledge that there is intoxicating liquor in an automobile. *State v. Leach*, 272 N.C. 733, 158 S.E.2d 782 (1968).

Applied in *State v. Tessnear*, 265 N.C. 319, 144 S.E.2d 43 (1965).

§ 18-49. Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.—It shall not be unlawful for any person to transport a quantity of alcoholic beverages not in excess of one gallon from a county in North Carolina coming under the provisions of this article to or through another county in North Carolina not coming under the provisions of this article: Provided, said alcoholic beverages are not being transported for the purpose of sale, and provided further that the container or containers of said alcoholic beverages are maintained within any vehicle as regulated and provided for in this article. Nothing contained in this article shall be construed to prevent the transportation through any county not coming under the provisions of this article, of alcoholic beverages in actual course of delivery to any alcoholic beverage control board established in any county coming under the provisions of this article. The provisions of this section limiting the authorized transportation of alcoholic beverages to one gallon shall apply also to fortified wine as defined in G.S. 18-96, provided that whenever any person desires to purchase or transport more than one gallon but not exceeding five gallons of fortified wine at one time, such person shall first obtain a purchase-transportation permit from the chairman of the local board, a member of the local board, or the general manager or supervisor of the local board of alcoholic control. No permit shall be issued by any authorized person to:

- (1) Persons not of good character,
- (2) Persons not sufficiently identified, if unknown to the issuing person,
- (3) Persons known or shown to be alcoholics or bootleggers.

The permit shall be signed by the person authorized to issue same and it shall authorize the purchaser named therein to purchase and transport the quantity of

fortified wine therein indicated not to exceed five gallons. The permit shall be issued by means of a printed form with at least two carbon copies of the same and on the face of the permit shall appear the following information:

- (1) Name and address of purchaser.
- (2) The name and location of the place where purchase is to be made.
- (3) Date issued and expiration date.
- (4) Destination.
- (5) Signature of person issuing the permit.
- (6) A statement that the permit is valid only for one purchase on the date shown and that the permit must accompany the merchandise while in transit and both the merchandise and the permit must be exhibited by purchaser to any law-enforcement officer upon request.

The permit herein authorized shall be valid only for one purchase and it shall expire at six o'clock P.M. of the date shown thereon. No purchase shall be made from any store except the store named on the permit. One copy of the permit shall be retained by the board issuing the same, one copy shall be delivered to the store from which the merchandise is purchased and one copy shall be retained by the permittee. The permit shall authorize the permittee to transport fortified wine from the place of purchase to the destination indicated thereon and the permit must accompany the merchandise while in transit and both the merchandise and permit must be exhibited to any law-enforcement officer upon request.

The chairman or any member of a local county or municipal board, general manager or supervisor of alcoholic control board is authorized to issue purchase-transportation permits.

Permits to be used shall be in the form substantially as follows:

ALCOHOLIC BEVERAGE CONTROL BOARD
..... COUNTY
....., NORTH CAROLINA
Date, 19....

PURCHASE-TRANSPORTATION PERMIT
(not to exceed five gallons)

NAME OF PURCHASER
ADDRESS
NAME OF STORE ADDRESS (of store)
DESTINATION
ROUTE TO BE USED

SIGNED.....
(Person authorized to issue)
Board Member

Note: This permit is valid only for one purchase and it shall expire at six o'clock P.M. of the date shown above. Special Note: This permit must accompany the merchandise while in transit. Both the merchandise and permit must be exhibited to any law-enforcement officer upon request.

Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine or imprisonment or both in the discretion of the court. (1937, c. 49, s. 14; 1967, c. 222, s. 7; 1969, c. 598, ss. 2, 3.)

Editor's Note.—

The 1967 amendment rewrote the second proviso to the first sentence.

The 1969 amendment added all of the section following the second sentence.

Section Has State-Wide Application.— The legislature intended this section to

have state-wide application. D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).

The law with reference to the possession of whiskey or similar intoxicating beverages is this: Whether the area be wet or dry, conforming or nonconforming, a per-

son may legally possess alcoholic liquors as defined by § 18-60 only in his private dwelling as provided by § 18-11 and while transporting not in excess of one gallon purchased out of the State or from an A.B.C. store within the State to his dwelling as provided by this section and § 18-58. This has been the law since the passage of

the A.B.C. Act of 1937. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to § 18-51.

Section Modifies §§ 18-11 and 18-32 (2).
—See *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

§ 18-49.6. Sale, possession, transportation of alcoholic beverages in excess of one gallon; permit required.—Notwithstanding any other provisions of law imposing restrictions or limitations upon the sale, purchase, possession or transportation of alcoholic beverages, it shall be lawful to purchase, possess and transport up to five gallons of alcoholic beverages as defined in article 3 in container or containers not smaller than one-fifth gallon from a county or municipal A.B.C. store to a named destination within the county; provided, the purchaser has in his possession a purchase-transportation permit and complies strictly with the provisions of this section through § 18-49.9 and provided, further, that said alcoholic beverages are not being transported for the purpose of sale and that the cap or seal on the container or containers of said alcoholic beverages have not been opened or broken. (1969, c. 617, s. 1.)

Editor's Note.—Session Laws 1969, c. 617, s. 3, provides: "This act shall apply to the counties of Alamance, Alleghany, Beaufort, Brunswick, Buncombe, Burke, Caldwell, Carteret, Catawba, Columbus, Craven, Cumberland, Dare, Durham, Edgecombe, Forsyth, Granville, Greene, Halifax, Haywood, Henderson, Hoke, Johnston, Jones, Lenoir, Martin, Mecklenburg, Moore, Nash, New Hanover, Orange,

Onslow, Pamlico, Pasquotank, Person, Pitt, Richmond, Rowan, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne and Wilson, and to the municipalities of Clinton, Concord, Dunn, Garland, Greensboro, Hertford, Jamestown, Maxton, Monroe, Mount Pleasant, North Wilkesboro, Pembroke, Reidsville, Roseboro, Rowland, Sanford, Sparta, St. Pauls, Taylorsville, Wadesboro and Wilkesboro."

§ 18-49.7. Purchase-transportation permit.—Whenever any person desires to purchase or transport more than one gallon of alcoholic beverages at one time, such person shall first obtain a purchase-transportation permit from the chairman of the local board, a member of the local board, or the general manager or supervisor of the local board of alcoholic control. No permit shall be issued by any authorized person to:

- (1) Persons not of good character,
- (2) Persons not sufficiently identified, if unknown to the issuing person,
- (3) Persons known or shown to be alcoholics or bootleggers.

The permit shall be signed by the person authorized to issue same and it shall authorize the purchaser named therein to purchase and transport the quantity of alcoholic beverages therein indicated not to exceed five gallons. The permit shall be issued by means of a printed form with at least two carbon copies of the same and on the face of the permit shall appear the following information:

- (1) Name and address of purchaser.
- (2) The name and location of the place where purchase is to be made.
- (3) Date issued and expiration date.
- (4) Destination.
- (5) Signature of person issuing the permit.
- (6) A statement that the permit is valid only for one purchase on the date shown and that the permit must accompany the merchandise while in transit and both the merchandise and permit must be exhibited by purchaser to any law-enforcement officer upon request.

The permit herein authorized shall be valid only for one purchase and it shall expire at six o'clock P.M. of the date shown thereon. No purchase shall be made

from any A.B.C. store except the store named on the permit. One copy of the permit shall be retained by the board issuing the same, one copy shall be delivered to the store from which the merchandise is purchased and one copy shall be retained by the permittee. The permit shall authorize the permittee to transport the alcoholic beverages from the place of purchase to the destination indicated thereon and the permit must accompany the merchandise while in transit and both the merchandise and permit must be exhibited to any law-enforcement officer upon request. (1969, c. 617, s. 1.)

Cross Reference.—See Editor's note to
§ 18-49.6.

§ 18-49.8. Persons authorized to issue permits.—The chairman or any member of a local county or municipal board, general manager or supervisor of [an] alcoholic control board is authorized to issue purchase-transportation permits. (1969, c. 617, s. 1.)

Cross Reference.—See Editor's note to § 18-49.6.

§ 18-49.9. Form of permits.—Permits to be used shall be in the form substantially as follows:

ALCOHOLIC BEVERAGE CONTROL BOARD
..... COUNTY
....., NORTH CAROLINA
Date, 19....
PURCHASE-TRANSPORTATION PERMIT
(not to exceed five gallons)

NAME OF PURCHASER
ADDRESS
A. B. C. STORE NO. ADDRESS (of the store)
DESTINATION
ROUTE TO BE USED

SIGNED
(Person authorized to issue)
Board Member

Note: This permit is valid only for one purchase and it shall expire at six o'clock P.M. of the date shown above.

Special Note: This permit must accompany the merchandise while in transit. Both the merchandise and permit must be exhibited to any law-enforcement officer upon request. (1969, c. 617, s. 1.)

Cross Reference.—See Editor's note to
§ 18-49.6.

§ 18-49.10. Penalty for violation of §§ 18-49.6 through 18-49.9.—Any person violating the provisions of §§ 18-49.6 through 18-49.9 shall be guilty of a misdemeanor and shall be punished by a fine or imprisonment or both in the discretion of the court. (1969, c. 617, s. 2.)

Cross Reference.—See Editor's note to § 18-49.6.

§ 18-50. Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.

No search warrant is required where the officer sees or has absolute personal knowledge that there is intoxicating liquor in an automobile. *State v. Leach*, 272 N.C. 733, 158 S.E.2d 782 (1968).

Applied in *State v. Tessnear*, 265 N.C. 319, 144 S.E.2d 43 (1965).

Cited in *Carter v. State Bd. of Alcoholic Control*, 274 N.C. 484, 164 S.E.2d 1 (1968).

§ 18-51. Possession and consumption of alcoholic beverages at designated places.—Notwithstanding any other provisions of chapter 18 of the General Statutes of North Carolina, it shall be lawful in any county or municipality of this State for any person, who is at least twenty-one years of age, to possess, for lawful purposes, alcoholic beverages, as defined in G.S. 18-60, in quantities not in excess of one gallon, unless otherwise authorized, provided that said alcoholic beverages are obtained from an authorized alcoholic beverage control store within this State, or from a lawful source outside this State, and provided that said alcoholic beverages are possessed for a purpose other than for sale or barter, and provided that said alcoholic beverages are purchased, possessed, and consumed in accordance with this and other applicable sections of chapter 18, and including the following:

(1) **Transportation.**—A person may transport, not for sale or barter, not more than one gallon of alcoholic beverages to and from any place where the beverage may be lawfully possessed or consumed; but if the cap or seal on the container or containers has been opened or broken, it shall be unlawful to transport the same in the passenger area of any motor vehicle.

It shall be unlawful for any person operating a for hire passenger vehicle as defined in G.S. 20-38 (20) b to transport alcoholic beverages except when the vehicle is actually transporting a bona fide paying passenger who is the actual owner of the alcoholic beverages being transported, such alcoholic beverages owned and possessed by each passenger shall be transported in the manner and amount authorized by this section, provided that the provisions of G.S. 20-16 (a) (8) shall not apply to a person convicted under this section. Provided, that the transportation of up to one gallon of alcoholic beverages, as defined in G.S. 18-60, shall not be ground for confiscation of the motor vehicle.

(2) **Residence and Related Places.**—A person may possess and consume said alcoholic beverages in his private residence, or in any private residence of another where permission has been given, or in any hotel or motel room which said person has rented or to which he is invited, or at any place of secondary residence similarly used, where permitted by the owner. A person may also possess and consume said alcoholic beverages, but not in view of the general public, on any other private property not primarily engaged in commercial entertainment and not open to the general public at the time, when such person, association or corporation has obtained the express permission of the owner or person lawfully in possession of said property, and when said alcoholic beverages are consumed by said person, his family, or his bona fide guests, or bona fide guests of the association or corporation; provided, however, this sentence shall not be construed to permit or in any way or manner authorize the possession or consumption of alcoholic beverages on premises for which a permit is required pursuant to subdivisions (3), (4), or (5) of G.S. 18-51.

(3) **Social Establishments.**—Any person, association, or corporation may furnish facilities, located on its premises, which facilities shall not be open to the general public, for the storage of alcoholic beverages for its bona fide members, in quantities not in excess of one gallon for each member, unless otherwise authorized, and for consumption by its members and their guests, but subject to the following conditions:

- a. The establishment is organized and operated solely for purposes of a social, recreational, patriotic, or fraternal nature; and
- b. It has a valid permit from the State Board of Alcoholic Control for this purpose; and
- c. The alcoholic beverages shall be stored in individual lockers and

the name of the beverage owner shall be clearly displayed on both the locker and the bottle or bottles ; and

- d. Any alcoholic beverages stored in any locker shall be for the exclusive use of the member and his guests, and shall not be sold or distributed to any other person.

(4) Special Occasions.—Alcoholic beverages in quantities in excess of one gallon may be possessed by a person on a special occasion, subject to the rules and regulations adopted by the State Board of Alcoholic Control, not for sale or barter, for the use and consumption of himself and his guests, when he meets one or more of the following requirements :

- a. He is using his personal residence or premises under his exclusive control, or
- b. He is using a facility, as a member, as defined in subdivision (3) of this section, and said facility has a valid permit from the State Board of Alcoholic Control for this purpose ; or
- c. He is using a commercial establishment or any part thereof for a private meeting or party limited in attendance to members or guests of a particular person, group, association, or organization, and said commercial establishment has obtained a permit from the State Board of Alcoholic Control for this purpose.

(5) Restaurants and Related Places.—It shall be unlawful for any person to possess or consume any alcoholic beverages of any and all kinds, other than fortified or sweet wines, which contain more than fourteen percent (14%) of alcohol by volume, on the premises of any business establishment which is not permitted under subdivisions (2), (3), or (4), of this section, unless said establishment meets the following requirements :

- a. The premises have an inside dining area with a seating capacity of at least 36 persons, and a separate kitchen facility ; and
- b. The business is engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging ; and provided further, the State Board of Alcoholic Control shall have broad power to examine the type and nature of the business, and the combination and location of separate or affiliated businesses at the same location to determine if the establishment is a bona fide restaurant-type facility ; and
- c. The business has a valid permit from the State Board of Alcoholic Control for this purpose, including the requirement that the business post the type of notices required by said Board.

(6) Unlawful Possession or Use.—It shall be unlawful for :

- a. Any person to drink alcoholic beverages or to offer a drink to another person,
 - 1. On the premises of a county or municipal liquor control store, or
 - 2. Upon any premises used or occupied by a county or municipal alcoholic control board, or
 - 3. On any public road, street or highway.
- b. Any person to make any public display of alcoholic beverages at any athletic contest.
- c. Any person to possess or consume any alcoholic beverages upon any of the premises designated under subdivisions (3), (4), or (5) of this section, unless there is conspicuously displayed a valid permit or notice on said premises from the State Board of Alcoholic Control, as required therein.
- d. Any person, association, or corporation to permit any alcoholic beverages to be possessed or consumed upon any premises not

authorized pursuant to chapter 18, North Carolina General Statutes.

- e. Any person to possess or consume any alcoholic beverages upon any premises where not authorized by law, or where said person has been forbidden to possess or consume alcoholic beverages by the owner, operator or person in charge of said premises.
- f. Any person, firm or corporation to refuse to surrender any permit or notice upon request of the State Board of Alcoholic Control, or to falsely display any such notice, or to display any notice not permitted by the State Board of Alcoholic Control, or to obtain any facsimile permit or notice from any person.

(7) Permits.—Any person, association or corporation making application for a permit under subdivisions (3), (4) b, (4) c, or (5), of this section shall file said application and appropriate fee with the State Board of Alcoholic Control, and said Board shall have the exclusive authority, not inconsistent herewith, in issuing any permit, or in renewing, suspending or revoking any temporary or annual permit, pursuant to the specific authority of G.S. 18-51, and each subdivision thereof, and pursuant to the other provisions of chapter 18, North Carolina General Statutes. The additional provisions relating to said permits are as follows:

- a. Said Board may issue temporary permits where application in proper form has been received, with applicable fees, which shall be valid for 90 days, unless sooner suspended or revoked. No applicant or permittee shall be entitled to any hearing with reference to the issuance, suspension or revocation of any temporary permit.
- b. Any temporary or annual permit shall be suspended or revoked by said Board, upon the suspension or revocation of any other permit or license by the State Board of Alcoholic Control, pursuant to any other section of chapter 18, North Carolina General Statutes.
- c. All annual permits issued under this section shall be valid until May 1, 1968, unless sooner suspended or revoked, and thereafter all annual permits shall be valid for one year, renewable on May 1, 1968 and annually thereafter, unless sooner suspended or revoked.
- d. Any person, association or corporation shall promptly surrender any permit issued hereunder upon request of said Board.
- e. Before exercising any privilege granted hereunder, and immediately upon the receipt of any temporary or annual permit, said person, association, or corporation receiving the same, shall keep conspicuously displayed said permit, and in addition, shall post a notice or notices, approved by said Board, designating the type of permit that is applicable to the premises. The Board shall approve and designate the type of signs, notices, and exhibits that may be displayed or used on any premises.
- f. All permits shall be the property of the State Board of Alcoholic Control, and no permit shall be transferable, and upon the termination of any business, or upon a change of ownership or control, all permits issued hereunder shall be immediately surrendered to said Board.
- g. All permits shall be issued for a designated location, and may not be transferred to any other location; a separate permit being required for each separate location of any business.

- h. Said Board shall not refuse the issuance of any permit to any person, firm or corporation who shall comply with the provisions of this article, and the issuance of a permit shall not be arbitrary in any case, but issuance of a permit shall be mandatory to any person, firm or corporation complying with the provisions of chapter 18, North Carolina General Statutes.
- (8) Fees.—Applications for permits shall be accompanied by appropriate fees, payable to the State Board of Alcoholic Control, which shall not be refundable in case a permit is refused, suspended or revoked. No additional fees or licenses shall be collected by any county or municipality under this section, and the fees received by the State Board of Alcoholic Control shall be deposited with the State Treasurer of North Carolina, as in the case of any other permit fees collected by said Board. No additional charge shall be imposed for any temporary permit, and the schedule of fees for the original permit is as follows:
 - a. Two hundred dollars (\$200.00) for a social establishment as defined in subdivision (3).
 - b. Two hundred dollars (\$200.00) for a commercial establishment as defined in subdivision (4) c.
 - c. One hundred dollars (\$100.00) for a restaurant as defined in subdivision (5) having less than 50 seating capacity.
 - d. Two hundred dollars (\$200.00) for a restaurant as defined in subdivision (5) having 50 or more seating capacity.
 - e. Three hundred dollars (\$300.00) for any establishment which obtains licenses under two or more of the foregoing schedules for the same premises.
 - f. The annual renewal fees for such permits shall be twenty-five percent (25%) of the original permit as herein set forth.

- (9) Penalty.—Violation of any provision of this section shall constitute a misdemeanor, and shall be punishable by fine, or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 16; c. 411; 1967, c. 222, s. 1; c. 1256, s. 3; 1969, c. 1018.)

Editor's Note.—The first 1967 amendment rewrote this section, which formerly contained only one paragraph and prohibited drinking or offering drinks on the premises of stores, public roads or streets, and drunkenness, etc., in public places. The second 1967 amendment struck out

former paragraph b of subdivision (6), making it unlawful for any person to be intoxicated in any public place, and relettered the subsequent paragraphs in that subdivision accordingly.

The 1969 amendment added the second paragraph of subdivision (1).

§ 18-51.1. Exceptions.—Notwithstanding the provisions of G.S. 18-51, the following provisions shall be applicable:

- (1) Exemption from Fees.—No fee shall be charged by the State Board of Alcoholic Control for any permit issued under subdivision (7) of G.S. 18-51 to the State or any county or municipality, for any premises operated by the State, county or municipality.
- (2) Local Laws.—Nothing in this article shall operate to repeal any of the local acts of the General Assembly of North Carolina prohibiting the possession or consumption of alcoholic beverages within any county, municipality, or portion thereof, and all such local acts shall continue in full force and effect and in concurrence herewith, until repealed or modified.
- (3) Exemption of Counties.—Until at least one county or municipal alcoholic beverage control store has been lawfully established within any county, no permit shall be issued by the State Board of Alcoholic Control for the purposes defined in subdivision (5) of G.S. 18-51 to any person,

association or corporation for premises located in said county. (1967, c. 222, s. 9; c. 1176.)

Local Modification.—Gaston, as to subdivision (3): 1967, c. 837. 1176, added the references to the State in subdivision (1).

Editor's Note. — Session Laws 1967, c.

§ 18-53. Advertising by county A.B.C. stores and on billboards prohibited.

Stated in *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

§ 18-54. Advertising by radio broadcasts prohibited.

Stated in *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

§ 18-57. Net profits to be paid into general fund of the various counties.

Local Modification.—Northampton: 1969, c. 226.

§ 18-58. Transportation into State; and purchases, other than from stores, prohibited.—It shall be unlawful for any person, firm, or corporation, to purchase in or to bring into this State, any alcoholic beverage from any source, except from a control store operated in accordance with this article, except a person may purchase legally outside of this State and bring into the same for his own personal use not more than one gallon of alcoholic beverage: Provided, that the container or containers of said alcoholic beverages are maintained within any vehicle as regulated and provided for in this article. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 22; 1955, c. 999; 1967, c. 222, s. 8.)

Editor's Note. — The 1967 amendment substituted "control" for "county" near the beginning of the first sentence, deleted "such" preceding "alcoholic beverage" immediately preceding the colon in the first sentence and rewrote the proviso to the first sentence.

The law with reference to the possession of whiskey or similar intoxicating beverages is this: Whether the area be wet or dry, conforming or nonconforming, a person may legally possess alcoholic liquors as defined by § 18-60 only in his private

dwelling as provided by § 18-11 and while transporting not in excess of one gallon purchased out of the State or from an A.B.C. store within the State to his dwelling as provided by § 18-49 and this section. This has been the law since the passage of the A.B.C. Act of 1937. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to this section and § 18-51.

Stated in *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

§ 18-60. Definition of "alcoholic beverage."

The law with reference to the possession of whiskey or similar intoxicating beverages is this: Whether the area be wet or dry, conforming or nonconforming, a person may legally possess alcoholic liquors as defined by this section only in his private dwelling as provided by § 18-11 and while transporting not in excess of one gallon purchased out of the State or from an A.B.C. store within the State to his dwelling as provided by § 18-49 and § 18-58.

This has been the law since the passage of the A.B.C. Act of 1937. *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966), decided prior to the 1967 amendments to §§ 18-11, 18-49, 18-51 and 18-58.

Cited in *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966); *D & W Inc. v. City of Charlotte*, 268 N.C. 720, 152 S.E.2d 199 (1966).

§ 18-61. County elections as to liquor control stores; application of Turlington Act; time of elections.

Problem Recognized by Legislature.—The truth of the fact that, due to varying

social and cultural differences within the State, the control of intoxicating liquors

was not a subject easily susceptible of uniform regulation was recognized by the 1937 legislature when it, after the end of

prohibition, adopted a "local option" plan of liquor control. *Gardner v. City of Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

ARTICLE 4.

Beverage Control Act of 1939.

§ 18-64. Definitions.

Exemption from Turlington Act.—Beer and the other beverages defined in this section are exempted from the Turlington Act (§ 18-1 et seq.). *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Possession of More than Five Gallons of Beer.—Although any individual may possess beer as defined by this section for his own use without restriction or regulation

as provided by § 18-66, defendant's possession of more than five gallons of beer in sixty king-size cans (7½ gallons) constituted prima facie evidence under § 18-32 that he had it for the purposes of sale. *State v. Causby*, 269 N.C. 747, 153 S.E.2d 467 (1967).

Cited in *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

§ 18-66. Transportation.

Possession of More than Five Gallons of Beer.—Although any individual may possess beer as defined by § 18-64 for his own use without restriction or regulation as provided by this section, defendant's possession of more than five gallons of beer in sixty king-size cans (7½ gallons) consti-

tuted prima facie evidence under § 18-32 that he had it for the purposes of sale. *State v. Causby*, 269 N.C. 747, 153 S.E.2d 467 (1967).

Quoted in *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

§ 18-67. Manufacture. — The brewing or manufacture of beverages for sale enumerated in § 18-64 shall be permitted in this State upon the payment of an annual license tax to the Commissioner of Revenue in the sum of five hundred dollars (\$500.00) for a period ending on the next succeeding thirtieth day of April and annually thereafter. The license specified in this section shall not be issued for the manufacture of the beverages described in § 18-64 (2) unless the applicant for license exhibits a valid permit from the State Board of Alcoholic Control to engage in the business of selling such beverages for resale, as provided in this chapter. Persons licensed under this section may sell such beverages in barrels, bottles, or other closed containers only to persons licensed under the provisions of this article to sell at wholesale, and no other license tax shall be levied upon the business taxed in this section. Provided, that pursuant to the rules and regulations of the State Board of Alcoholic Control, the sale of beverages enumerated in G.S. 18-64 to nonresident wholesalers is authorized when the purchase is not for resale in this State. The sale of malt, hops, and other ingredients used in the manufacture of beverages for sale enumerated in § 18-64 is hereby permitted and allowed: Provided, that any person engaged in the business of manufacturing in this State the wines described in § 18-64, subdivision (2) shall be required to pay the following tax based on the number of gallons manufactured:

Where not more than one hundred gallons are manufactured for sale	\$ 5.00
Where one hundred gallons and not more than two hundred gallons are manufactured for sale	10.00
Where two hundred gallons and not more than five hundred gallons are manufactured for sale	25.00
Where five hundred gallons and not more than one thousand gallons are manufactured for sale	50.00
Where one thousand gallons and not more than two thousand five hundred gallons are manufactured for sale	200.00
Where two thousand five hundred gallons or more are manufactured for sale	250.00

When a licensed resident manufacturer of the beverages defined in G.S. 18-64 (1) procures proper license under this section, it may receive the beverages defined in G.S. 18-64 (1) which are manufactured by it at some point outside this State, but within the United States, for transshipment to dealers in this or other states, provided that such resident manufacturer is actually engaged in the manufacturing in this State of the beverages defined in G.S. 18-64 (1). Such shipments of the beverages defined in G.S. 18-64 (1) for transshipment to other states shall be kept segregated by the resident manufacturer in its warehouse from any such North Carolina taxpaid beverages and shall comply with any and all rules and regulations promulgated by the Commissioner of Revenue and the North Carolina Board of Alcoholic Control.

Nothing in this article shall be construed to impose any tax upon any resident citizen of this State who makes native wines for the use of himself, his family and guests from fruits, grapes and berries cultivated or grown wild upon his own land. (1939, c. 158, s. 504; 1945, c. 903, s. 4; 1967, c. 162, s. 1; c. 867, s. 1; 1969, cc. 732, 1057.)

Editor's Note.—The first 1967 amendment, effective July 1, 1967, added that part of the first paragraph that follows the tax schedule. Section 4 of c. 162, Session Laws 1967, provides: "Nothing herein shall be construed to amend, modify or repeal the provisions of G.S. 81-14.3 or G.S. 81-18; otherwise, all laws and clauses of laws in conflict with this act are hereby repealed."

The second 1967 amendment inserted

§ 18-72. Character of license.

Cited in D & W, Inc. v. City of Charlotte, 268 N.C. 577, 151 S.E.2d 241 (1966).

§ 18-73. Retail license issued for sale of wines.

(1) "On premises" licenses shall be issued only to bona fide hotels, cafeterias, cafes and restaurants which shall have a Grade A rating from the State Department of Health, and shall authorize the licensees to sell at retail for consumption on the premises designated in the license; provided, no such license shall be issued except to such hotels, cafeterias, cafes and restaurants where prepared food is customarily sold and only to such as are licensed under the provisions of subsection (a) of § 105-62

(1967, c. 1110, s. 10.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, deleted "§ 105-62; provided further, no such license shall be issued to persons or places which are licensed only under," formerly appearing between "of" and "subsection" near the end of subdivision (1).

As the rest of the section was not

changed by the amendment, only subdivision (1) is set out.

Section 16, c. 1110, Session Laws 1967, provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 18-76. County license to sell at retail.

Local Modification.—Onslow: 1967, c. 373.

§ 18-78. Revocation or suspension of license or permit; confiscation of beverages not meeting standards of State Board of Alcoholic Control; rule making power of Board; refusal to surrender permit.

Who May Engage in Sale and Distribution of Beer.—Only those authorized by

the Board and granted its permit may engage in the sale and distribution of beer. J.

Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control, 265 N.C. 679, 144 S.E.2d 895 (1965).

A permit is a privilege granted only to those who meet the standards which the Board has set up and may, and should be, revoked if the permittee fails to keep faith with the Board by observing its regulations and obeying the laws of the State. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

Revocation of Permit Requires Notice and Hearing.—Before a permit may be revoked the permittee is entitled to notice and a hearing before the Board. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

Authority of Board.—Authority to conduct a hearing and determine whether a State retail (or wholesale) beer permit should be revoked is lodged in the State Board of Alcoholic Control by this section. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

Board Charged with Duty of Finding Facts. — The agency that hears the wit-

§ 18-78.1. Prohibited acts under and wines for consumption on or off premises.

Subdivision (1) of this section and § 18-90.1 (1) will be construed together and harmonized to give effect to a consistent legislative policy. *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

And the specific provisions of subdivision (1) prevail over the general provisions of § 18-90.1 (1) in regard to the sale at retail of beer and wine under a license from the A.B.C. Board. *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

The fact that the A.B.C. Board proceeds under § 18-90.1 instead of this section in suspending a license to sell beer and wine cannot affect the rights of the parties and does not authorize the A.B.C. Board to suspend the license for violation of § 18-90.1. *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

Sale of Beer to Minor Unknowingly on Single Occasion.—Under the provisions of subdivision (1) of this section, the sale of beer or wine to a person under eighteen years of age by a licensee or an employee of a licensee is ground for the suspension or revocation of the license only if the sale

nesses and observes their demeanor as they testify—the Board of Alcoholic Control—is charged with the duty of finding the facts. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

The Board's findings are conclusive, etc.—

In accord with original. See *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

The findings of the Board, when made in good faith and supported by evidence, are final. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

Duty of Court.—The duty of the court is to review the evidence and determine whether the Board had before it any material and substantial evidence sufficient to support its findings. *J. Lampros Wholesale, Inc. v. North Carolina Bd. of Alcoholic Control*, 265 N.C. 679, 144 S.E.2d 895 (1965).

Applied in *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

license for sale of malt beverages on or off premises.

was knowingly made to such minor; therefore, evidence that an employee of the licensee sold beer on a single occasion to a seventeen year old boy, without any evidence that the employee or the licensee knew the boy to be under eighteen years of age, will not support order of the A.B.C. Board suspending the license. *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966), overruling *Campbell v. North Carolina State Bd. of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964), to the extent of any conflict.

“Knowingly”.—

In accord with original. See *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Campbell v. North Carolina State Bd. of Alcoholic Control, 263 N.C. 224, 139 S.E.2d 197 (1964), cited under this catchline in original, overruled to the extent of any conflict in *National Food Stores v. North Carolina Bd. of Alcoholic Control*, 268 N.C. 624, 151 S.E.2d 582 (1966).

Proprietor Responsible, etc.—

In accord with original. See *D & W, Inc. v. City of Charlotte*, 268 N.C. 577, 151 S.E.2d 241 (1966).

Cited in Carter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 Control, 274 N.C. 484, 164 S.E.2d 1 (1969).
 (1968); Porter v. State Bd. of Alcoholic

§ 18-78.2. Presumption of knowledge of age of purchaser.—Whenever a sale of beverages as defined in § 18-64 is made to a person under the age of eighteen years, it shall be *prima facie* evidence that the person making the sale had knowledge that the purchaser was under the age of eighteen years. Such *prima facie* evidence may be rebutted by showing that the purchaser produced for inspection a drivers license, selective service card, school identification card, or military identification card showing the age of the purchaser to be eighteen years or more and the description of the physical appearance of the person on the identification card reasonably describes the purchaser. In the absence of such identification, the *prima facie* evidence of knowledge of age may be rebutted by the vendor by other evidence which reasonably indicated at the time of sale that the purchaser was eighteen years of age or more. (1969, c. 998.)

§ 18-79. State license; sale of “short-filled” packages by manufacturers to employees.—Every person who intends to engage in the business of retail sale of the beverages enumerated in § 18-64, subdivision (1) shall also apply for and procure a State license from the Commissioner of Revenue.

For the first license issued to each licensee five dollars (\$5.00), and for each additional license issued to one person an additional tax of ten percent (10%) of the five dollars base tax shall be charged. That is to say, that for the second license issued the tax shall be five dollars and fifty cents (\$5.50) annually, for third license six dollars (\$6.00) annually, and an additionally fifty cents (50c.) per annum for each additional license issued to such person.

A resident manufacturer of the beverages defined in G.S. 18-64 (1) may sell “short-filled” packages to its employees for the sole use of said employees, members of their families and bona fide guests in this State provided that such manufacturer sells only such “short-filled” packages on which the appropriate North Carolina taxes have been paid or will be paid, based upon the size of the bottle or container short filled. Any sale made to any employee of said manufacturer under this section shall not be construed as a retail or wholesale sale under any other provisions of chapter 18 of the General Statutes of North Carolina and such manufacturer shall not be required by reason of such sales to obtain a permit or license as provided by this chapter. (1939, c. 158, s. 515; 1967, c. 162, s. 2.)

Editor's Note. — The 1967 amendment, effective July 1, 1967, added the last paragraph.

Section 4 of the 1967 amendatory act provides: “Nothing herein shall be con-

strued to amend, modify or repeal the provisions of G.S. 81-14.2 or G.S. 81-18; otherwise, all laws and clauses of laws in conflict with this act are hereby repealed.”

§ 18-81. Additional tax. — (a) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages enumerated in § 18-64, subdivision (1), of seven dollars and fifty cents (\$7.50) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents ($1\frac{1}{4}\%$) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of two and one-half cents ($2\frac{1}{2}\%$) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents ($6\frac{2}{3}\%$) per bottle or container: Provided fruit cider of alcoholic content not exceeding that provided in this article may be sold in bottles or other containers of not more than six ounces at a tax of five eighths of a cent ($\frac{5}{8}\%$) per bottle or container.

Wholesale distributors and importers may, at their option, pay the tax levied in

this subsection at the rate of twenty-one one hundredths of a cent (.21¢) per ounce when the beverages taxed herein contained in bottles of over six ounces.

(a1) In addition to all other taxes levied in this chapter, there is hereby levied an additional tax or surtax upon the sale of beverages enumerated in G.S. 18-64, subdivision (1), of seven dollars and fifty cents (\$7.50) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents (1¼¢) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of two and one-half cents (2½¢) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents (6⅔¢) per bottle or container. Notwithstanding any provisions of subsection (t) [subsection (p)] of this section, none of the revenues collected pursuant to the tax imposed by this subsection shall be allocated or distributed to any county or municipality, but all of said revenue derived from the increase in tax rates imposed by this subsection shall be paid into the general fund of the State. Every person, firm or corporation who owns or possesses any of the beverages enumerated in subdivision (1) of G.S. 18-64 on July 1, 1955, for the purpose of sale in this State shall file with the Commissioner of Revenue not later than July 20, 1955, a complete inventory of such beverages and pay to the Commissioner of Revenue the tax imposed by this subsection with respect to all such beverages on hand on said July 1, 1955. The Commissioner of Revenue shall prescribe the form and manner of making such inventory reports and the method of evidencing the payment of the tax herein imposed with respect to said inventory of said beverages.

Wholesale distributors and importers may, at their option, pay the tax levied in this subsection at the rate of twenty-one one hundredths of a cent (.21¢) per ounce when the beverages taxed herein are contained in bottles of over six ounces.

(a2) Notwithstanding any other provisions of subsection (a) of G.S. 18-81, as amended by chapter 1313 of the 1955 Session Laws, the rate of the tax therein imposed in said subsection (a) of G.S. 18-81 with respect to beverages described in subdivision (1) of G.S. 18-64 shall be one and one-half cents (1½¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Notwithstanding any other provisions of subsection (a1) of G.S. 18-81, as enacted by chapter 1313 of the 1955 Session Laws, the rate of additional tax or surtax therein imposed in said subsection (a1) of G.S. 18-81, said subsection being an amendment to G.S. 18-81, with respect to beverages described in subdivision (1) of G.S. 18-64 shall be one and one-half cents (1½¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Except as herein provided, all provisions of article 4 of chapter 18 of the General Statutes shall be applicable with respect to the taxes imposed by this subsection in the same manner and to the same extent said provisions are applicable to other taxes imposed in said article with respect to beverages described in subdivision (1) of G.S. 18-64.

The provisions of this subsection shall not be applicable with respect to beverages in bottles or containers in other than those of exactly seven ounces, and the provisions of G.S. 18-81, as amended by said chapter 1313, above referred to, shall be applicable to said beverages in any other size containers, and the taxes therein imposed with respect to beverages in containers of more than six but not more than twelve ounces shall be applicable with respect to said beverages in containers of more than seven but not more than twelve ounces.

(b) Each licensed wholesale distributor and importer of beverages enumerated in subdivision (1) of G.S. 18-64 shall pay the excise tax levied by this article on said beverages on or before the fifteenth day of the month following the calendar month in which they are first sold or disposed of within this State by said wholesale distributor and importer.

(c) Each of the licensees responsible for the payment of the excise tax levied by this article shall, on or before the fifteenth of each month, file a report, verified on forms provided by the Commissioner of Revenue, showing, for the preceding calendar month, the exact quantities of beverages, enumerated in subdivision (1) of G.S. 18-64, by size and type of container:

- (1) Constituting his beginning and ending inventory for the month;
- (2) Shipped to him from inside this State and received by him in this State;
- (3) Shipped to him from outside this State and received by him in this State;
- (4) Sold or disposed of by him in this State;
- (5) Sold by him in this State to army, navy, air force and coast guard services of the United States and their organized personnel separately indicating those sales or transactions of beverages enumerated in subdivision (1) of G.S. 18-64 to which the excise tax is not applicable;
- (6) Sold or disposed of by him to persons outside this State, separately indicating those sales or transactions of beverages enumerated in subdivision (1) of G.S. 18-64 to which the excise tax is not applicable.

The report, on forms prescribed by the Commissioner of Revenue, shall also show the amount of excise tax payable, after allowance for all proper deductions, for all such beverages sold or disposed of by him in this State, and shall include such additional information as the Commissioner of Revenue may require for the proper administration of this article. Payment of the excise tax levied by this article in the amount disclosed by the report, shall accompany the report, and shall be paid to the Commissioner of Revenue. Each wholesale distributor and importer required to file a return shall keep complete and accurate books, papers, invoices and other records as may be necessary to substantiate the accuracy of his report and the amount of excise tax due, and shall retain such records for a period of three years, subject to the use and inspection of the Commissioner of Revenue or his agents.

(d) Any person required by this section to retain books, papers, invoices and other records, who fails to produce same upon demand by the Commissioner of Revenue or his agent, unless such nonproduction is due to providential or other causes beyond his control, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(e) Each manufacturer, nonresident wholesaler, and foreign wholesaler licensed by the North Carolina Commissioner of Revenue to sell and/or deliver any of the beverages enumerated in subdivision (1) of G.S. 18-64 in North Carolina, at the time it sells and/or delivers such beverages to a licensed North Carolina wholesale distributor or importer shall furnish to each such wholesale distributor or importer a sales ticket or invoice in duplicate, and a third copy to the Commissioner of Revenue, with the following information written thereon:

- (1) The name and address of the manufacturer, nonresident wholesaler, or foreign wholesaler making the delivery and/or sale;
- (2) The name, address and license number of the wholesale distributor or importer receiving the shipment, and/or making the purchase;
- (3) The exact number of barrels, kegs or cases delivered and/or purchased, specifying the size and type of container.

(f) Each manufacturer, nonresident wholesaler or foreign wholesaler licensed by the Commissioner of Revenue to sell and/or deliver beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99 in North Carolina shall prepare and file a monthly report, verified on forms provided by the Commissioner of Revenue, showing the exact number of barrels kegs or cases, specifying the size and type of container, of such beverages sold to licensed wholesale distributors or importers during the previous calendar month. This report must be filed with the Commissioner of Revenue on or before the fifteenth day of each calendar month following the month during which the sales are made. Each manufacturer, nonresident wholesaler or foreign wholesaler shall retain copies of such sales records for a period of

three years, subject to the use and inspection of the Commissioner of Revenue or his agents.

(g) Persons operating boats, dining cars, buffet cars or club cars upon or in which malt beverages are sold, shall keep such records of the sales of such beverages in this State as the Commissioner of Revenue shall prescribe and shall submit monthly reports of such sales to the Commissioner of Revenue upon a form prescribed therefor by the Commissioner of Revenue, and shall pay the excise tax levied under this article at the time such reports are filed.

(h) On the total excise tax due upon the sale of beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99, levied by this article, the Commissioner of Revenue shall allow a discount of four percent (4%). Said discount shall constitute compensation allowed by the State of North Carolina to wholesale distributors and importers for spoilage and breakage and for expenses incurred in the preparation of monthly reports and the maintenance of books, papers and invoices and bond required by this article. Provided that no compensation or refund shall be made for taxpaid beverages given as free goods or advertising.

(i) In addition to the allowance of a discount on the excise tax due from wholesale distributors or importers, as provided in subsection (h) of this section, the wholesale distributor or importer shall not be required to pay the excise tax on any beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99, destroyed or spoiled or otherwise rendered unsalable in a major disaster, upon adequate proof of same. For the purposes of this subsection a major disaster shall be defined as the destruction, spoilage or unsalability of 50 or more cases, or their equivalent, of beverages described in subdivision (1) of G.S. 18-64 or of 25 or more cases, or their equivalent, of beverages described in subdivision (2) of G.S. 18-64, and G.S. 18-96 and G.S. 18-99.

(i1) The Commissioner of Revenue shall promulgate rules and regulations to relieve licensed residedence manufacturers from the liability of paying the excise taxes levied under this section on beverages enumerated in G.S. 18-64 (1), which are furnished free of charge to customers, visitors and employees on the manufacturers licensed premises for consumption on said premises.

(j) The Commissioner of Revenue shall promulgate rules and regulations to relieve resident manufacturers, wholesale distributors and importers from the liability of paying the excise tax levied and imposed on beverages enumerated in subdivision (1) of G.S. 18-64 which are intended to be sold and are thereafter sold to army, navy, air force and coast guard services of the United States and their organized personnel in this State or which are intended to be shipped and are thereafter shipped out of this State by such resident manufacturers, wholesale distributors or importers for resale outside of this State or which are intended for use or consumption by or on oceangoing vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use by or on such vessel.

(j1) Each manufacturer or bottler manufacturing beverages within or outside the State of North Carolina which are intended to be sold and are thereafter sold to the army, navy, air force, coast guard services, or any other military establishment in North Carolina, shall identify such beverages by placing on the label, crown, can end or kegs the phrase "For Military Use Only," any and all laws, regulations, and requirements to the contrary notwithstanding. Provided that all other beverages described in G.S. 18-64 (1) intended for sale in North Carolina shall bear no special identification other than proprietary crowns, lids or stamps.

(k) If the excise tax levied and imposed in this section shall not be paid when due by the wholesale distributor or importer responsible therefor, there shall be added to the amount of the tax as a penalty, a sum equivalent to ten percent (10%) thereof, and in addition thereto interest on the tax and penalty at the rate of one half of one percent ($\frac{1}{2}$ of 1%) per month or fraction of a month from the date

the tax became due until paid. Nothing herein contained shall be construed to relieve any licensee otherwise liable from liability for payment of the excise tax

(l) Any person who shall fail, neglect, or refuse to comply with or shall violate any provisions of this section, for which no specific penalty is provided, or who shall refuse to permit the Commissioner of Revenue or his agents to examine his books, papers, invoices and other records, his store of beverages in and upon any premises where the same are manufactured, bottled, stored, sold, offered for sale, or held for sale, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court.

(m) The Commissioner of Revenue is hereby charged with the enforcement of the provisions of this section and hereby authorized and empowered to prescribe, adopt, promulgate, and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this section, and the collection of taxes, penalties, and interest imposed by this article.

(n) The Commissioner of Revenue is hereby authorized to prescribe, adopt, promulgate, and enforce the rules and regulations relating to the transportation of beverages enumerated in § 18-64 through this State, and from points outside of this State to points within this State, and to prescribe, adopt, promulgate and enforce rules and regulations reciprocal to those of, or laws of, any other state or territory affecting the transportation of beverages manufactured in this State.

(o) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages described in G.S. 18-64, subdivision (2) at the rate of sixty cents (60¢) per gallon.

Each licensed wholesale distributor and importer of beverages enumerated in subdivision (2) of G.S. 18-64 shall pay the excise tax levied by this article on said beverages on or before the fifteenth day of the month following the calendar month in which they are first sold or disposed of within the State by said licensed wholesale distributor or importer. The provisions of subsection (c) through (1) inclusive, of this section, shall also be applicable to the control of the sale of beverages enumerated in G.S. 18-64, subdivision (2), G.S. 18-96 and G.S. 18-99.

(p) From the taxes collected annually under subsection (a) an amount equivalent to forty-seven and one-half percent (47½%) thereof, and from the taxes collected annually under subsection (o) an amount equivalent to one half thereof shall be allocated and distributed, upon the basis herein provided, to counties and municipalities wherein such beverages may be licensed to be sold at retail under the provisions of this article. The amounts distributable to each county and municipality entitled to the same under the provisions of this subsection shall be determined upon the basis of population therein as shown by the latest federal decennial census. Where such beverages may be licensed to be sold at retail in both the county and municipality, allocation of such amounts shall be made to both the county and the municipality on the basis of population. Where such beverages may be licensed to be sold at retail in a municipality in a county wherein the sale of such beverages is otherwise prohibited, allocation of such amounts shall be made to the municipality on the basis of population; provided, however, that where the sale of such beverages is prohibited within defined areas within a county or municipality, the amounts otherwise distributable to such county or municipality on the basis of population shall be reduced in the same ratio that such areas bear to the total area of the county or municipality, and the amount of such reduction shall be retained by the State: Provided, further, that if said area within a county is a municipality for which the population is shown by the latest federal decennial census, reduction of such amounts shall be based on such population rather than on area. The Commissioner of Revenue shall determine the amounts distributable to each county and municipality, for the period July 1st, 1947, to September 30th, 1947, inclusive, and shall distribute such amounts within sixty (60) days thereafter; and the Commissioner of Revenue annually thereafter shall determine the amounts distributable to each county and municipality for each

twelve-month period ending September 30th and shall distribute such amounts within sixty (60) days thereafter.

The taxes levied in this section are in addition to the taxes levied in Schedule E of the Revenue Act.

(q) Each nonresident manufacturer, nonresident wholesaler, and foreign wholesaler of beverages enumerated in subdivision (1) of G.S. 18-64 of this article, then licensed by the Commissioner of Revenue to sell and/or deliver such beverages in North Carolina shall, if required by the Commissioner of Revenue, on or before January 15, 1968, make an advance lump sum excise tax payment, in cash or equivalent, to the Commissioner of Revenue, in an amount equal to each such nonresident manufacturer's, nonresident wholesaler's and foreign wholesaler's highest two months' tax liability for tax crowns, lids and stamps during the twelve-month period ending June 30, 1967. Each such advance lump sum excise tax payment shall be credited to the account of such nonresident manufacturer, nonresident wholesaler and foreign wholesaler by the Commissioner of Revenue, and, beginning on the first day of January 1969, and on the first day of each month thereafter, a refund in the amount of one twelfth of each advance lump sum excise tax payment shall be made by the Commissioner of Revenue to such nonresident manufacturer, nonresident wholesaler, or foreign wholesaler, until the total amount of such refunds equals the total amount of such advance lump sum excise tax payment.

(r) As of the close of business on December 31, 1967, each nonresident manufacturer, nonresident wholesaler and foreign wholesaler then licensed by the Commissioner of Revenue to sell and/or deliver in North Carolina the beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99 shall take an inventory of all North Carolina tax-paid crowns, lids and stamps, affixed and unaffixed, in his possession and control and shall submit the results of such inventory to the North Carolina Commissioner of Revenue no later than January 15, 1968, verified on forms provided by the Commissioner.

Upon receipt of each such verified inventory, the Commissioner of Revenue shall satisfy himself as to the accuracy of each such inventory and shall determine the total amount of tax payment represented thereby.

(s) Each nonresident manufacturer, nonresident wholesaler and foreign wholesaler in possession of unaffixed tax-paid stamps as of the close of business on December 31, 1967, shall surrender such tax-paid stamps to the Commissioner of Revenue within 60 days thereafter and shall claim refund therefor.

(t) Each nonresident manufacturer, nonresident wholesaler and foreign wholesaler may claim refunds on his monthly report due on or before January 15, 1968, for the full amount of the tax paid by the affixation, before January 1, 1968, of stamps, crowns or lids to the original containers of beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99, which containers are still in his possession and control on January 1, 1968. The Commissioner of Revenue shall provide for a refund in the amount of the tax paid:

- (1) For said stamps, crowns and lids affixed before January 1, 1968 to containers in the possession and control of such manufacturer or wholesaler on January 1, 1968;
- (2) For tax stamps returned unused to the Commissioner within 60 days after January 1, 1968; and
- (3) For tax crowns and lids as to which the nonresident manufacturer, nonresident wholesaler or foreign wholesaler has submitted satisfactory proof to the Commissioner, on or before January 15, 1968, that said tax crowns and lids were in his possession as unused inventory on January 1, 1968.

The total of the refunds provided for in this subsection shall be credited to the account of said nonresident manufacturer, nonresident wholesaler or foreign wholesaler in the same manner as that provided in subsection (q) of this section and

shall be refunded to said nonresident manufacturer, nonresident wholesaler or foreign wholesaler in the same manner and in accordance with the schedule set forth in that subsection.

Each nonresident manufacturer, nonresident wholesaler and foreign wholesaler shall, after determination of the amount of refund due him for his crown and lid inventory on January 1, 1968, thereafter be permitted to use the crowns and lids constituting that inventory on the beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99, solely as closures, without such use indicating payment of the North Carolina excise tax.

(u) As of the close of business on December 31, 1967, each wholesale distributor and importer licensed to sell beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99 shall take an inventory of all such beverages in his possession and control having tax-paid crowns, lids and stamps affixed thereto and shall submit, verified on forms provided by the Commissioner, the results of such verified inventory to the Commissioner of Revenue no later than January 15, 1968. Upon receipt of each such verified inventory, the Commissioner of Revenue shall satisfy himself as to the accuracy of each such inventory and shall determine the total amount of the tax payment represented thereby.

Each wholesale distributor and importer may claim credit or refund on his monthly report due on or before January 15, 1968, for the full amount of the tax represented by the inventory filed as required by this subsection. The Commissioner of Revenue shall provide for a credit or refund equal to the full amount of said tax to each wholesale distributor or importer claiming same.

Each wholesale distributor or importer shall, after determination of the amount of credit or refund due him, thereafter be permitted to sell or otherwise dispose of all beverages enumerated in G.S. 18-64, G.S. 18-96 and G.S. 18-99 to which tax-paid crowns, lids or stamps are affixed, which are in his possession and control as of the close of business on December 31, 1967, and which have been reported in the inventory required by this subsection; provided that said crowns, lids or stamps shall not be considered evidence that the excise tax has been paid, on the beverages to which they are affixed. (1939, c. 158, s. 517; c. 370, s. 1; 1941, c. 50, s. 7; c. 339, s. 4; 1943, c. 400, s. 6; cc. 564, 565; 1945, c. 708, s. 6; 1947, c. 1084, ss. 7-9; 1951, c. 1162, s. 1; 1955, c. 1313, s. 6; c. 1370; 1957, c. 1340, s. 11; 1963, c. 460, s. 3; c. 992, s. 2; 1967, c. 162, s. 3; c. 759, ss. 1-20; 1969, c. 1075, s. 1; cc. 1239, 1268.)

Editor's Note.—

The first 1967 amendment, effective July 1, 1967, added the following provisions to subsection (d) of this section as it appears in the replacement volume:

"Provided, the beverages defined in G.S. 18-64 (1) may be shipped by a resident manufacturer to itself in this State or from this State without the tax-paid crown or lid being affixed thereto, when such beverages are for taste purposes only and as a part of its laboratory function of its manufacturing operation. The shipment of such beverages for taste purposes only shall first be approved by the North Carolina Board of Alcoholic Control and properly identified as required by said Board prior to shipment into this State."

Section 4 of the first 1967 amendatory act provides: "Nothing herein shall be construed to amend, modify or repeal the provisions of G.S. 81-14.3 or G.S. 81-18;

otherwise, all laws and clauses of laws in conflict with this act are hereby repealed."

The second 1967 amendment, effective Jan. 1, 1968, rewrote this section.

The subsection designated (j1) in the section as set out above was designated (jj) in the second 1967 amendatory act.

The reference to subsection (p) has been inserted in brackets in the first paragraph of subsection (a1), since former subsection (t) was redesignated (p) by the second 1967 amendatory act.

The first 1969 amendment, effective July 1, 1969, increased the taxes in subsection (a1) and in the second paragraph of subsection (a2).

The second 1969 amendment, effective July 1, 1969, substituted "four percent (4%)" for "two percent (2%)" in subsection (h).

The third 1969 amendment added subsection (i1).

Session Laws 1969, c. 1075, s. 8, provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 18-82. By whom excise taxes payable.—The excise tax levied in G.S. 18-81 upon the sale of beverages enumerated in G.S. 18-64, subdivision (1) shall be paid to the Commissioner of Revenue by the wholesale distributor or importer of such beverages, and the excise tax levied in G.S. 18-81 upon the sale of beverages enumerated in G.S. 18-64, subdivision (2), G.S. 18-96 and G.S. 18-99 shall be paid to the Commissioner of Revenue by the wholesale distributor or importer of such beverages; provided that the excise tax levied in G.S. 18-81 shall be paid and collected on the same beverages only once. The Commissioner of Revenue shall require each wholesale distributor or importer to furnish bond in an indemnity company licensed to do business under the insurance laws of this State in such sums as the Commissioner of Revenue shall find adequate to cover the tax liability of each such wholesale distributor or importer, proportioned to the volume of business of each such wholesale distributor or importer, but in no event to be less than one thousand dollars (\$1,000.00) or more than fifty thousand dollars (\$50,000.00), or to deposit federal, State, county or municipal bonds in required amounts, such county and municipal bonds to be approved by the Commissioner of Revenue. The Commissioner of Revenue may grant such extension of time for compliance with this condition as may be found reasonable. (1939, c. 158, s. 518; 1941, c. 339, s. 4; 1967, c. 759, s. 21.)

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, rewrote this section.

§ 18-83.2. Importers to be licensed.

(b) : Repealed by Session Laws 1967, c. 759, s. 22.

(c) : Repealed by Session Laws 1967, c. 759, s. 22. (1957, c. 1244; 1967, c. 759, s. 22.)

Editor's Note.—The 1967 amendment, effective Jan. 1, 1968, struck out former subsections (b) and (c), relating to tax-paid crowns or lids and tax-paid wine stamps.

As subsection (a) was not changed by the amendment, it is not set out.

§ 18-85.1. Tax on fortified wines. In addition to other taxes levied in this article, there is hereby levied a tax upon the sale of fortified wines as defined in §§ 18-96 and 18-99 of seventy cents (70¢) per gallon. (1951, c. 1162, s. 3; 1955, c. 1313, s. 6; 1967, c. 759, s. 23.)

Editor's Note.—The 1967 amendment, effective Jan. 1, 1968, struck out former provisions of this section relating to tax

stamps and other methods of collecting the taxes levied by this section.

§ 18-85.2. Additional tax on spirituous liquors.—In addition to the taxes provided for in subsections (a) and (b) of G.S. 18-85, there is hereby levied an additional tax or surtax upon the retail sale of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal liquor stores, at the rate of five cents (5¢) for each five ounces or fractional part thereof until July 1, 1970, and on and after July 1, 1970, at the rate of five cents (5¢) for each three and one-third ounces or fractional part thereof. The proviso contained in subsection (a) of G.S. 18-85 shall not apply to the taxes levied under this section.

The aforesaid additional tax or surtax shall be in addition to the "total prices" of alcoholic beverages established by the State Board of Alcoholic Control pursuant to G.S. 18-39 (3). The entire proceeds of the additional tax levied in this section shall be payable monthly at the same time, in the same manner and subject to the

same rules, regulations and penalties as apply to the taxes imposed under G.S. 18-85. (1969, c. 1075, s. 1.)

Editor's Note.—Session Laws 1969, c. 1075, s. 10, makes the act effective July 1, 1969.

§ 18-88.1. Wine for sacramental purposes exempt from tax.—The tax levied in this article upon the sale of beverages described in § 18-64 (2) shall not apply to sacramental wines received by ordained ministers of the gospel under the provisions of § 18-21. (1945, c. 708, s. 6.)

Editor's Note.—This section is set out in the Supplement to correct an error appearing in the replacement volume.

§ 18-88.2. Exemption of beer, etc., sold to oceangoing vessels.—The taxes levied in this article upon the sale of beverages described in G.S. 18-64 (1) shall not apply or be chargeable against any manufacturer, bottler, wholesaler, or distributor on any of such beverages sold and delivered for use or consumption by or on oceangoing vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use of such vessel; provided, however, that sales of beverages described in § 18-64 (1) made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of such taxes. (1963, c. 992, s. 1; 1967, c. 759, s. 24.)

Editor's Note.—The 1967 amendment, delivery of beverages to oceangoing vessels without having affixed thereto tax paid lids or crowns.

§ 18-90.1. Sale to or purchase by minors.—It shall be unlawful for:

- (1) Any person, firm or corporation knowingly to sell or give any of the products described in G.S. 18-64 to any minor under 18 years of age.
- (2) Any minor under 18 years of age to purchase or possess, or for anyone to aid or abet such minor in purchasing any of the products described in G.S. 18-64.
- (3) Any person, firm or corporation knowingly to sell or give any of the products described in G.S. 18-60 to any minor under 21 years of age.
- (4) Any minor under 21 years of age to purchase or possess, or for anyone to aid or abet such minor in purchasing any of the products described in G.S. 18-60. (1933, c. 216, s. 8; 1959, c. 745, s. 1; 1967, c. 222, s. 3.)

Cross Reference.—

See note to § 18-78.1.

Editor's Note.—The 1967 amendment rewrote this section.

ARTICLE 5.

Fortified Wine Control Act of 1941.

§ 18-97. Certain sales, etc., prohibited; names of persons ordering wines furnished police or sheriff.—It shall be unlawful for any person, firm or corporation, except alcoholic beverage control stores operated in North Carolina, to sell, or possess for sale, any fortified wines as defined herein. Upon the request of any chief of police or sheriff any alcoholic beverage control system shall furnish the names of any persons ordering such wines, and the dates and amounts of such orders. Nothing herein contained shall be construed to permit any person to order and receive by mail or express any spirituous liquors. (1941, c. 339, s. 2; 1945, c. 635; c. 708, s. 6; 1969, c. 598, s. 1.)

Editor's Note.—The 1969 amendment deleted the former second sentence, relating to purchase on order and receipt by mail or express of fortified wines in quantities in excess of one gallon.

§ 18-99.1. Manufacturers and bottlers of fortified and sweet wines. — Any person, firm or corporation authorized to do business in North Carolina may, subject to the laws of this State and the rules and regulations of the North Carolina Board of Alcoholic Control, engage in the business of manufacturing, producing and bottling of fortified and sweet wines as defined in G.S. 18-96 and G.S. 18-99, and is hereby authorized and permitted to manufacture, purchase, import and transport brandy and other ingredients and equipment used in the manufacture of fortified and sweet wines; provided, that G.S. 18-49.1 shall be applicable to the transportation of fortified and sweet wines, alcohol, and brandy used in the manufacture thereof.

The same annual license tax imposed upon manufacturers and bottlers of unfortified wines in G.S. 18-67 and G.S. 18-68 shall be paid by the manufacturer and bottler of fortified and sweet wines.

Fortified and sweet wines manufactured and bottled under this section may be sold as now authorized and shall be taxed as provided by statute. (1967, c. 614.)

ARTICLE 7.

Beer and Wine; Hours of Sale.

§ 18-107. Regulation by counties and municipalities.

Opinions of Attorney General. — Mr. Daniel A. Manning, Williamston Town Attorney, 10/2/69. Cited in Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

ARTICLE 10.

Regulation or Prohibition of Sale of Wine.

§ 18-120. Municipalities in certain counties authorized to regulate or prohibit sale of wine.

Opinions of Attorney General. — Winifred T. Wells, Wallace Town Attorney, 10/15/69.

ARTICLE 11.

Elections on Question of Sale of Wine and Beer.

§ 18-124. Provision for elections in counties or municipalities.

Opinions of Attorney General. — Mr. Homer Haywood, Chairman, Montgomery Board of Elections, 7/8/69.

§ 18-125. Form of ballots. — If such election is called to determine whether or not wine shall be sold within the county, the ballot shall contain the following:

- For the legal sale of wine
- Against the legal sale of wine

If such election is called to determine whether or not beer shall be sold within the county, the ballot shall contain the following:

- For the legal sale of beer
- Against the legal sale of beer

If such an election is called to determine whether or not wine and/or beer shall be sold within the county, the ballot shall contain the following:

- For the legal sale of wine
- Against the legal sale of wine
- For the legal sale of beer
- Against the legal sale of beer

In addition to the forms of ballots authorized by this section, questions as to sales of beer and wine may be placed on the ballot in county elections in any form authorized under this chapter for similar elections in municipalities. (1947, c. 1084, s. 2; 1969, c. 647, s. 1.)

Editor's Note.—The 1969 amendment added the last paragraph.

§ 18-126. Effect of vote for or against sale of beer or wine.

(c) The result of any county election held pursuant to this article shall not in any manner affect the legal sale of beer or wine or both, or the types of sales, in any municipality in which the legal sale of beer or wine or both is permitted at the time of the county election. (1947, c. 1084, s. 3; 1969, c. 647, s. 2.)

Editor's Note.—The 1969 amendment changed by the amendment, only subsection (c) is set out.

As the rest of the section was not

§ 18-127. Elections in certain municipalities after majority vote in county against sale of wine or beer.

Local Modification.—Moore: 1969, c. 262.

§ 18-127.2. Provisions of § 18-127 extended to municipalities having seasonal population of 1,000 or more.—The provisions of G.S. 18-127 and all portions thereof are extended to include any incorporated municipality having a seasonal population of one thousand (1,000) or more persons.

An incorporated municipality shall be deemed to have a seasonal population of one thousand (1,000) or more persons if it shall be determined by the mayor and governing body of the municipality that for a period of six (6) weeks in the year such municipality has an average daily population of one thousand (1,000) or more people. An affirmative finding to this effect entered upon the records of the municipality shall be determinative of this question.

This section shall not apply to municipalities located in the counties of Ashe, Avery, Bladen, Burke, Cherokee, Clay, Columbus, Dare, Davie, Jackson, Macon, Northampton, Robeson, Rutherford, Scotland, Stanly, Swain, Transylvania, Union and Watauga. (1963, c. 1092; 1969, c. 595.)

Editor's Note.—The 1969 amendment added Jackson, Swain and Transylvania to the list of counties in the last paragraph.

§ 18-128.1. Certain wholesalers excepted.—Nothing in this article shall prevent bottlers, manufacturers or wholesalers of beer, who have complied with article 12 of chapter 18 of the General Statutes, from bottling, manufacturing, possessing, transporting or selling beer as a wholesaler to any person, firm or corporation who has complied with the provisions of article 12 of chapter 18 of the General Statutes, or, pursuant to the rules and regulations of the State Board of Alcoholic Control, selling to nonresident wholesalers when the purchase is not for resale in this State. (1951, c. 998, s. 1; 1967, c. 867, s. 2.)

Editor's Note.—The 1967 amendment added at the end of the section the provisions as to selling to nonresident wholesalers.

ARTICLE 12.

Additional Powers of State Board over Wine and Malt Beverages.

§ 18-129. Power of State Board of Alcoholic Control to regulate distribution and sale of wine and malt beverages; determination of qualifications of applicant for permit, etc.

Local Modification.—Cumberland, Hoke, Moore and Onslow: 1969, c. 728.

§ 18-129.1. Authority of the Governor to limit sale of wine and malt beverages.—When the Governor finds that a state of emergency, as defined in § 14-288.1, exists anywhere within the State, he may order the cessation of all sale or transfer, manufacture, or bottling of malt beverages or wine in all or any portion of the State for the period of the emergency. His order shall be directed to the chairman of the State Board of Alcoholic Control. The express authority granted by this section is not intended to limit any other authority, express or implied, to order cessation of these activities. (1969, c. 869, s. 5.)

§ 18-138. Rules and regulations for enforcement of article.

Cited in *Porter v. State Bd. of Alcoholic Control*, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

§ 18-141. Sale and consumption of beer or wine during certain hours prohibited.—No beer or wine shall be sold between the hours of 11:45 o'clock P.M. Eastern Standard Time and 7:30 o'clock A.M., nor shall any beer or wine be consumed in any place where beer or wine is sold between the hours of 12:00 o'clock midnight Eastern Standard Time and 7:30 o'clock A.M. (1949, c. 974, s. 12; 1951, c. 997, s. 1; 1963, c. 426, s. 12; 1969, c. 1131.)

Editor's Note.—

The 1969 amendment inserted "Eastern Standard Time" in two places in this section.

Opinions of Attorney General. — Mr. Broxie J. Nelson, Associate Raleigh City Attorney, 7/29/69.

Chapter 19.

Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

Article 2.

Civil Remedy for Sales of Harmful Materials to Minors.

Sec.

- 19-15. Examination by the court; probable cause; service of summons.
- 19-16. Appearance and answer; default judgment.
- 19-17. Trial.
- 19-18. Judgment; limitation to district.
- 19-19. Injunctions.
- 19-20. Contempt; defenses; extradition.
- 19-21. Districts without a district court.

Sec.

- 19-9. Title.
- 19-10. Purposes.
- 19-11. Public policy.
- 19-12. Definitions.
- 19-13. Commencement of civil proceeding.
- 19-14. Filing and form of complaint.

ARTICLE 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this chapter.—Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, prostitution, gambling, illegal sale of whiskey, or illegal sale of beer, or illegal sale of narcotic drugs as defined in the Uniform Narcotic Drug Act is guilty of nuisance, and the building, erection, or place, or the ground itself, in or upon which such lewdness, assignation, prostitution, gambling, or illegal sale of whiskey, beer, or narcotic drugs is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided. Provided, that the illegal sale of beer shall not be declared to be a nuisance where the person or building sought to be enjoined is

subject to the provisions of the Beverage Control Act of 1939. (Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C. S., s. 3180; 1949, c. 1164; 1967, c. 142.)

Editor's Note. — The 1967 amendment made this section applicable to the illegal sale of beer, substituted "whiskey, beer, or narcotic drugs" for "liquor" near the middle of the section and added the proviso at the end of the section.

Admissibility of Evidence. — Where defendant was not charged with maintaining

a nuisance, the admission of evidence tending to show the general reputation of defendant's premises was error. *State v. Tessnear*, 265 N.C. 319, 144 S.E.2d 43 (1965).

Applied in *State ex rel. Bowman v. Fipps*, 266 N.C. 535, 146 S.E.2d 395 (1966).

§ 19-3. When triable; evidence; dismissal of complaint.

Evidence, etc.—

This section, which makes evidence of the general reputation of the place admissible for the purpose of proving a nuisance, is not applicable where the defendant is not charged with maintaining a nuisance. *State v. Tessnear*, 265 N.C. 319, 144 S.E.2d 43 (1965).

Hence, evidence of the general reputation of defendant's premises is inadmissible in prosecutions for liquor law violations involving a charge of unlawful sale or possession of intoxicants at particular premises. *State v. Tessnear*, 265 N.C. 319, 144 S.E.2d 43 (1965).

§ 19-5. Order abating nuisance; what it shall contain.

Proceeding Is in Personam.—

A proceeding to abate a nuisance is not a proceeding in rem against the property itself, but is a proceeding in personam. *State ex rel. Bowman v. Fipps*, 266 N.C. 535, 146 S.E.2d 395 (1966).

And Lessor Must Have Knowledge before His Premises Can Be Padlocked. — Before the court can padlock a lessor-own-

er's premises and deprive him of the possession of his property on account of a nuisance maintained thereon by his tenant, it must be established by verdict, in a proceeding to which the owner is a party, that he knew, or could by due diligence have known, that the nuisance was being maintained. *State ex rel. Bowman v. Fipps*, 266 N.C. 535, 146 S.E.2d 395 (1966).

§ 19-6. Application of proceeds of sale.

Applied in *State ex rel. Bowman v. Fipps*, 266 N.C. 535, 146 S.E.2d 395 (1966).

§ 19-8. Attorney's fees may be taxed as costs.

Fee Discretionary. — The allowance of a fee is a matter in the discretion of the trial judge. *State ex rel. Bowman v. Fipps*, 266 N.C. 535, 146 S.E.2d 395 (1966).

ARTICLE 2.

Civil Remedy for Sales of Harmful Materials to Minors.

§ 19-9. Title. — This article shall be known and cited as the North Carolina Law on the Protection of Minors from Harmful Materials. (1969, c. 1215, s. 1.)

Editor's Note. — Session Laws 1969, c. 1215, s. 5, makes the act effective July 1, 1969.

§ 19-10. Purposes. — The purposes of this article are to provide public prosecutors or solicitors with a speedy civil remedy for obtaining a judicial determination of the character and contents of publications, and with an effective power to enjoin promptly the sale of harmful materials to minors. (1969, c. 1215, s. 1.)

§ 19-11. Public policy. — The public policy of this State requires that all proceedings prescribed in this article shall be examined, heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech. (1969, c. 1215, s. 1.)

§ 19-12. Definitions.—As used within this article, the following definitions shall apply:

- (1) “Harmful Material”—
 - a. Any picture, photograph, drawing, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse, and which is harmful to minors, or
 - b. Any book, pamphlet, magazine, or printed matter however reproduced which contains any matter enumerated in subparagraph a of this subsection or which contains explicit or detailed verbal descriptions or accounts of sexual excitement, sexual conduct or sadomasochistic abuse, and which, taken as a whole, is harmful to minors.
- (2) “Harmful to minors”—that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
 - a. Predominantly appeals to the prurient, shameful or morbid interest of minors, and
 - b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials for minors, and
 - c. Is utterly without redeeming social importance for minors.
- (3) “Knowledge of the Minor’s Age”—
 - a. Knowledge or information that the person is a minor, or
 - b. Reason to know, or a belief or ground for belief which warrants further inspection or inquiry as to the age of the minor.
- (4) “Knowledge of the Nature of the Material”—
 - a. Knowledge of the character and content of any material described herein, or
 - b. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to this article, or is the subject of a pending proceeding instituted pursuant to this article.
- (5) “Minor”—any person under the age of eighteen years.
- (6) “Nudity”—the showing of the human male or female genitals, public area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (7) “Person”—any individual, partnership, firm, association, corporation or other legal entity.
- (8) “Sadomasochistic abuse”—flagellation or torture by or upon a person clad in undergarments, a mask or a bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (9) “Sexual conduct”—acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
- (10) “Sexual excitement”—the condition of human male or female genitals when in a state of sexual stimulation or arousal. (1969, c. 1215, s. 1.)

§ 19-13. Commencement of civil proceeding.—(a) Whenever the solicitor or prosecutor for any judicial district has reasonable cause to believe that any person is engaged in selling, distributing or disseminating in any manner harmful material to minors or may become engaged in selling, distributing or disseminating in any manner harmful material to minors, the solicitor or prosecutor

for the judicial district in which such material so offered for sale shall institute an action in the district court for that district for adjudication of the question of whether such material is harmful to minors.

(b) The provisions of the Rules of Civil Procedure and all existing and future amendments of said Rules shall apply to all proceedings herein, except as otherwise provided in this article. (1969, c. 1215, s. 1.)

§ 19-14. Filing and form of complaint.—The action authorized by this article shall be commenced by the filing of a complaint to which shall be attached, as an exhibit, a true copy of the allegedly harmful material. The complaint shall:

- (1) Be directed against such material by name, description, volume, and issue, as appropriate;
- (2) Allege that such material is harmful to minors;
- (3) Designate as respondents, and list the names and all known addresses of any person in this State preparing, selling, offering commercially distributing or disseminating in any manner such material to minors, or possessing such material with the apparent intent to offer to sell or commercially distribute or disseminate in any manner such material to minors;
- (4) Seek an adjudication that such material is harmful to minors; and
- (5) Seek a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or disseminating in any manner such material to minors or from permitting minors to inspect such material. (1969, c. 1215, s. 1.)

§ 19-15. Examination by the court; probable cause; service of summons.—(a) Upon the filing of a complaint pursuant to this article, the solicitor or prosecutor shall present the same together with attached exhibits, as soon as practicable to the court for its examination and reading.

(b) If, after such examination and reading, the court finds no probable cause to believe such material to be harmful to minors, the court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action.

(c) If, after such examination and reading, the court finds probable cause to believe such material to be harmful to minors, the court shall enter an order to that effect whereupon it shall be the responsibility of the solicitor or prosecutor promptly to cause the clerk of the superior court to issue summonses together with copies of said order and said complaint as are needed for the service of the same upon respondents. Service of such summons, order and complaint shall be made upon each respondent thereto in any manner provided by law for the service of civil process. (1969, c. 1215, s. 1.)

§ 19-16. Appearance and answer; default judgment.—(a) On or before the return date specified in the summons issued pursuant to this article, or within fifteen days after the service of such summons, or within fifteen days after receiving actual notice of the issuance of such summons, the author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or distribution or disseminating in any manner, or any person in this State preparing, selling, offering, exhibiting or commercially distributing, or disseminating in any manner or possessing with intent to sell, offer or commercially distribute or exhibit or disseminate in any manner the material attached as an exhibit to the endorsed complaint, may appear and may intervene as a respondent and file an answer.

(b) If, after service of summons has been effected upon all respondents, no person appears and files an answer on or before the return date specified in the summons, the court may forthwith adjudge whether the material so exhibited to

the endorsed complaint is harmful to minors and enter an appropriate final judgment. (1969, c. 1215, s. 1.)

§ 19-17. Trial.—(a) Upon the expiration of the time for filing answers by all respondents, but not later than the return date specified in the summons, the court shall, upon its own motion, or upon the application of any party who has appeared and filed an answer, set a date for the trial of the issues joined.

(b) Any respondent named in the complaint, or any person who becomes a respondent by virtue of intervention pursuant to this article, shall be entitled to a trial of the issues within one day after joinder of issue. A decision shall be rendered by the court or jury, as the case may be, within two days of the conclusion of the trial.

(c) Every person appearing and answering as a respondent shall be entitled, upon request, to a trial of any issue by a jury. If a jury is not requested by any such respondent, the issues shall be tried by the court without a jury. (1969, c. 1215, s. 1.)

§ 19-18. Judgment; limitation to district.—(a) In the event that the court or jury, as the case may be, fails to find the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment accordingly and shall dismiss the complaint.

(b) In the event that the court or jury, as the case may be, finds the material attached as an exhibit to the complaint to be harmful to minors, the court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting him from selling, commercially distributing, or giving away such material to minors or from permitting minors to inspect such material.

(c) No interlocutory order, judgment, or subsequent order of enforcement thereof, entered pursuant to the provisions of this article, shall be of any force and effect outside the judicial district in which entered; and no such order or judgment shall be res judicata in any proceeding in any other judicial district. (1969, c. 1215, s. 1.)

§ 19-19. Injunctions.—(a) If the court finds probable cause to believe the exhibited material to be harmful to minors, and so enters an order, the court may, upon the motion of the solicitor or prosecutor, issue a temporary restraining order against any respondent prohibiting him from offering, selling, commercially distributing or disseminating in any manner such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that one or more of the respondents are engaged in the sale, distribution or dissemination of harmful material to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon.

(b) Every temporary restraining order shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its own terms within such time after entry, not to exceed three days, as the court fixes unless within the time so fixed the respondent against whom the order is directed consents that it may be extended for a longer period.

(c) In the event that a temporary restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing within two days after the granting of such order and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the solicitor or prosecutor shall proceed with the application for a pre-

liminary injunction and, if he does not do so, the court shall dissolve the restraining order.

(d) No preliminary injunction shall be issued without at least two days' notice to the respondents. (1969, c. 1215, s. 1.)

§ 19-20. Contempt; defenses; extradition.—(a) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice by personal service or otherwise of any restraining order or injunction entered pursuant to this article, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction after notice and hearing shall be sentenced as provided by law.

(b) No person shall be guilty of contempt pursuant to this section:

- (1) For any sale, distribution or dissemination to a minor where such person had reasonable cause to believe that the minor involved was eighteen years old or more, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more;
- (2) For any sale, distribution or dissemination where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian;
- (3) Where such person is a bona fide school, museum or public library or is acting in his capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(c) In the event that any person found guilty of contempt pursuant to this section cannot be found within this State, the executive authority of this State shall, unless such person shall have appealed from the judgment of contempt and such appeal has not been finally determined, demand his extradition from the executive authority of the state in which such person may be found, pursuant to the law of this State. (1969, c. 1215, s. 1.)

§ 19-21. Districts without a district court.—(a) Prior to the establishment of a district court in any judicial district, any action instituted pursuant to this article shall be instituted in the superior court of such district.

(b) When a district court is established in a district, any cases pending in the superior court shall be transferred to the district court in accordance with the provisions of chapter 7A of the General Statutes of North Carolina. (1969, c. 1215, s. 2.)

Chapter 19A.

Protection of Animals.

Sec.

19A-1. Definitions.

19A-2. Purpose.

Sec.

19A-3. Preliminary injunction or restraining order.

19A-4. Permanent injunction.

§ 19A-1. Definitions.—For the purposes of this chapter the following definition of terms shall be applicable:

- (1) The terms "animals" and "dumb animals" shall be held to include every useful living creature.
- (2) The term "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or

permitted; but such term shall not be construed to prohibit lawful taking or attempting to take game animals or birds as allowed by law, provided further that such term shall not include activities sponsored by agencies or institutions conducting bio-medical research or training or for sport as provided by the laws of North Carolina.

(3) The term "person" as used herein shall be held to include any persons, firm or corporation, including any nonprofit corporation, such as a society for the prevention of cruelty to animals. (1969, c. 831.)

§ 19A-2. Purpose.—It shall be the purpose of this chapter to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available and it shall be proper in any action to combine causes of action against one or more defendants for the protection of one or more animals. A real party in interest as plaintiff shall be held to include any "person" as hereinbefore defined even though such person does not have a possessory or ownership right in an animal; a real party in interest as defendant shall include any person who owns or has possession of an animal. (1969, c. 831.)

§ 19A-3. Preliminary injunction or restraining order.—Upon the filing of a verified complaint in superior court in the county in which cruelty to an animal has allegedly occurred, and upon petition for a preliminary injunction or temporary restraining order, the resident judge or any judge holding a regular or special term of court may in the court's discretion issue such preliminary injunction or temporary restraining order, the duration of which shall be twenty days. Such injunction or restraining order may in the discretion of the court issue without prior notice to any person named as a defendant in the verified complaint, if service of process cannot be obtained, and such injunction may issue immediately and as soon as practicable be served upon every person named as a defendant. Every such preliminary injunction or restraining order, if the petition or complaint so requests, may in the discretion of the court give plaintiff the right to temporarily correct the condition giving rise to the cruel treatment of an animal; and if it shall appear upon the face of the complaint or verified petition, that the condition giving rise to the cruel treatment of an animal requires that plaintiff take custody of an animal, then it shall be proper for the court in its discretion in the order to allow plaintiff to take possession of the animal. (1969, c. 831.)

§ 19A-4. Permanent injunction.—On the date specified in a preliminary injunction or temporary restraining order, which date shall not be later than twenty days from the issuance thereof, a resident superior court judge or a superior court judge holding a regular or special term of superior court in the county in which the action is brought shall determine the merits of the action by trial without jury, and upon hearing such evidence as may be presented, shall enter orders as he deems appropriate, including the issuance of a permanent injunction or final determination of the custody of the animal where appropriate. (1969, c. 831.)

Chapter 20.

Motor Vehicles.

Article 1A.

Reciprocity Agreements as to Registration and Licensing.

Sec.

20-4.6. Declarations of extent of reciprocity, when; deferral period for registration of vehicles owned by new residents.

Article 2.

Uniform Driver's License Act.

20-13.1. Revocation of license of provisional licensee upon conviction of moving violation in connection with accident resulting in personal injury or property damage.

20-14. Duplicate licenses.

20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.

20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs.

20-20. Surrender of licenses.

20-23.2. Suspension of license for conviction of traffic offense in federal court.

20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

Article 2A.

Afflicted, Disabled or Handicapped Persons.

20-37.2. Handicapped drivers—display of distinctive flags.

20-37.3. Handicapped drivers—issuance of flags and cards.

20-37.4. Handicapped drivers—unauthorized use of flag; violation of §§ 20-37.2 to 20-37.5.

20-37.5. Handicapped drivers—definition.

Article 3.

Motor Vehicle Act of 1937.

Part 3 Registration and Certificates of Titles of Motor Vehicles.

20-58. Perfection by indication of security interest on certificate of title.

20-58.1. Duty of the Department upon receipt of application for notation of security interest.

20-58.2. Date of perfection.

Sec.

20-58.3. Notation of assignment of security interest on certificate of title.

20-58.6. Duty of secured party to disclose information.

20-58.7. Cancellation of certificate.

20-58.8. Applicability of §§ 20-58 through 20-58.8; use of term "lien".

20-58.9. [Repealed.]

20-63.1. Department may cause plates to be reflectorized.

Part 4. Transfer of Title or Interest.

20-75. When transferee is dealer or insurance company.

20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

Part 5. Issuance of Special Plates.

20-81.3. Special personalized registration plates.

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Part 6. Vehicles of Nonresidents of State, etc.

20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by local chapters of American National Red Cross.

Part 7. Title and Registration Fees.

20-101. For hire vehicles to be marked.

Part 8. Anti-Theft and Enforcement Provisions.

20-114.1. Willful failure to obey traffic officer; firemen as traffic officers.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

20-122.1. Motor vehicles to be equipped with safe tires.

20-130.2. Use of amber lights on certain vehicles.

Part 10. Operation of Vehicles and Rules of the Road.

20-139.1. Result of a chemical analysis admissible in evidence; presumption.

20-140.2. Overloaded or overcrowded vehicle; persons riding on motorcycles to wear safety helmets.

20-143.1. Certain vehicles must stop at all railroad grade crossings.

20-162.2. Removal of unauthorized vehicles from private lots.

Part 12. Penalties.

Sec.

20-179. Penalty for driving while under the influence of intoxicating liquor or narcotic drugs; limited driving permits for first offenders.

Article 3A.

Motor Vehicle Law of 1947.

Part 2. Safety Equipment Inspection of Motor Vehicles.

20-183.2. Safety equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station.

20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful safety inspection certificate; thirty-day grace period for expired inspection certificates.

Article 4.

State Highway Patrol.

20-187.1. Awards.

20-196.2. Use of airplanes to discover violations of §§ 20-138 to 20-171; testimony of pilots and observers; declaration of policy.

Article 7.

Miscellaneous Provisions Relating to Motor Vehicles.

20-218.1. Private and parochial school buses.

20-218.2. Speed limit for activity buses for nonprofit purpose.

20-219.1. Parked or abandoned vehicles removed from public highways.

Article 8.

Habitual Offenders.

20-220. Declaration of policy.

Reciprocity Agreements as to Registration and Licensing.

§ 20-4.6. Declarations of extent of reciprocity, when; deferral period for registration of vehicles owned by new residents. — In the absence of an agreement or arrangement with another jurisdiction, the Commissioner may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and which shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the

Sec.

20-221. Habitual offender defined.

20-222. Commissioner to certify record to superior court.

20-223. Solicitor to initiate court proceeding, petition.

20-224. Service of petition, order to show cause.

20-225. Hearing, procedure.

20-226. Court's findings, judgment.

20-227. No new license issued for five years.

20-228. Driving after judgment prohibited.

20-229. Restoration of driving privilege.

20-230. Appeals.

20-231. No existing law modified.

Article 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

20-279.10. Custody, disposition and return of security; escheat.

20-279.14. Suspension to continue until judgment satisfied.

20-279.17. [Repealed.]

Article 13.

The Vehicle Financial Responsibility Act of 1957.

20-309.1. Purchase of automobile insurance by minors.

20-310.2. Motor vehicle liability insurance; companies may not fail to renew solely by reason of age; penalties provided.

20-311. Revocation of registration when financial responsibility not in effect.

Article 13A.

Certification of Automobile Insurance Coverage by Insurance Companies.

20-319.1. Company to forward certification within seven days after receipt of request.

20-319.2. Penalty for failure to forward certification.

ARTICLE 1A.

basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

It is hereby provided that the owner of a private passenger vehicle who takes up residence in North Carolina on a permanent or temporary basis shall be exempt from the provisions of registration for a period of 30 days from the date that either permanent or temporary residence is established in North Carolina provided that his vehicle is properly licensed in the jurisdiction of which he is a resident or a former resident. (1961, c. 642, s. 1; 1967, c. 1166.)

Editor's Note. — The 1967 amendment added the second paragraph.

ARTICLE 2.

Uniform Driver's License Act.

§ 20-6. Definitions.—Terms used in this article shall be construed as follows, unless another meaning is clearly apparent from the language or context or unless such construction is inconsistent with the manifest intention of the legislature.

“Chauffeur” shall mean every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property hauling vehicle or combination of vehicles licensed for more than 26,000 pounds gross weight and the driver of any passenger carrying vehicle of over nine (9) passenger capacity except the driver of a church bus, farm bus, school bus or an activity bus for a nonprofit organization when such bus is being operated for a nonprofit purpose, who holds a valid operator's license. Those under twenty years of age must be certified and licensed to operate a North Carolina school bus.

“Department” shall mean the Department of Motor Vehicles.

“Highway” shall include any trunk line highway, State aid road or other public highway, road, street, avenue, alley, driveway, parkway, or place, under the control of the State or any political subdivision thereof, dedicated, appropriated or opened to public travel or other use.

“Motor vehicle” shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

“Nonresident” shall mean any person whose legal residence is in some state other than North Carolina or in a foreign country.

“Operator” shall mean any person other than a “chauffeur” who shall operate a motor vehicle or who shall be in the driver's seat of a motor vehicle when the engine is running or who shall steer or direct the course of a motor vehicle which is being towed or pushed by another motor vehicle.

“Person” shall include any individual, corporation, association, copartnership, company, firm or other aggregation of individuals.

“Vehicle” shall include any device suitable for use on the highways for the conveyance, drawing or other transportation of persons or property, except those propelled or drawn by muscular power or those used exclusively upon tracks.

As applied to operators' and chauffeurs' licenses issued under this article, the words:

“Cancelled” shall mean that a license which was issued through error or fraud has been declared void and terminated. A new license may be obtained only as permitted in this article.

“Resident”.—Any individual who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed

to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the individual is not a resident of the State.

“Revocation” shall mean that the licensee’s privilege to drive a vehicle is terminated for the period stated in the order of revocation.

“Suspension” shall mean the licensee’s privilege to drive a vehicle is temporarily withdrawn. (1935, c. 52, s. 1; 1941, c. 36; 1943, c. 787, s. 1; 1951, c. 1202, s. 1; 1953, cc. 683, 841; 1955, c. 1187, s. 1; 1957, c. 997; 1963, c. 160; 1969, c. 561, s. 1; c. 1000, s. 1.)

Editor’s Note.—

The first 1969 amendment inserted the definition of “resident.”

The second 1969 amendment rewrote the exception clause to the next-to-last sentence and added the last sentence of the definition of “chauffeur.”

Opinions of Attorney General. — Mr. Blaine M. Madison, Commissioner, Board of Juvenile Correction, 10/8/69.

§ 20-7. Operators’ and chauffeurs’ licenses; expiration; examinations; fees.

(f) The operators’ licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within sixty days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this article, the Department shall issue a new license to him. A new license issued within sixty days prior to the expiration of an applicant’s old license or within twelve months thereafter shall automatically expire four years from the date of the expiration of the applicant’s old license.

Any person serving in the armed forces of the United States on active duty and holding a valid operator’s license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Department by mail. Any other person, except a nonresident as defined in this article, who holds a valid operator’s license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Department by mail. For purposes of this section “temporarily” shall mean not less than thirty days continuous absence from North Carolina. In either case, the Department may waive the examination and color photograph ordinarily required for the renewal of an operator’s license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application; provided that such license shall expire thirty days after licensee returns to North Carolina, and such license shall be designated as temporary.

(i) The fee for issuance or reissuance of an operator’s license shall be three dollars and twenty-five cents (\$3.25) and the fee for issuance or reissuance of a chauffeur’s license shall be four dollars and seventy-five cents (\$4.75).

(ii) Any person whose operator’s or chauffeur’s license or other privilege to operate a motor vehicle in this State has been suspended, canceled or revoked pursuant to the provisions of this chapter shall pay a restoration fee of ten dollars (\$10.00) to the Department prior to the issuance to such person of a new operator’s or chauffeur’s license or the restoration of such operator’s or chauffeur’s license or privilege, such restoration fee shall be paid to the Department in addition to any and all fees which may be provided by law.

(m) The Department upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program approved by the State Superintendent of Public Instruction even though the applicant has not yet reached the legal age to be eligible for an operator’s license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Department. The restric-

tions which the Department may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(n) Every operator's or chauffeur's license issued by the Department shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However, no person charged with failing to so carry such license shall be convicted, if he produces in court an operator's or chauffeur's license theretofore issued to him and valid at the time of his arrest.

(o) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and punished in the discretion of the court: Provided, that no person shall be convicted of operating a motor vehicle without an operator's or chauffeur's license if he produces in court at the time of his trial upon such charge an expired operator's or chauffeur's license and a renewal operator's or chauffeur's license issued to him within thirty (30) days of the expiration date of the expired license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865.)

Cross Reference.—As to jurisdiction of prosecution under this section, see notes to §§ 7A-271 and 7A-272.

Editor's Note.—

The 1967 amendment, effective Jan. 1, 1968, inserted "and color photograph" in the second paragraph of subsection (f), increased the fees in subsection (i) from \$2.50 to \$3.25 and \$4.00 to \$4.75, respectively, and inserted "and color photograph of the licensee of a size approved by the Commissioner" in the first sentence of subsection (n).

The first 1969 amendment rewrote the second paragraph of subsection (f).

The second 1969 amendment, effective July 1, 1969, added subsection (i1).

The third 1969 amendment, substituted "approved by the State Superintendent of Public Instruction" for "as provided for in G.S. 20-88.1" in the first sentence of present subsection (m). Present subsection (m) was formerly subsection (1-1). Former subsections (m) and (n) have been designated (n) and (o).

As the rest of the section was not

changed by the amendments, only subsections (f), (i), (i1), (m), (n) and (o) are set out.

This section and § 20-35, being in pari materia, must be construed together, and, if possible, they must be reconciled and harmonized. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Penalty.—Any person convicted of operating a motor vehicle over any highway in this State without having first been licensed as such operator, in violation of subsection (a) of this section, is guilty of a misdemeanor; and, under subsection (n) and § 20-35 (b), is subject to punishment by imprisonment for a term of not more than six months. The superior court, even if it has jurisdiction in other respects, has no authority to pronounce judgment imposing a prison sentence of two years for this criminal offense. State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

Applied in State v. Green, 266 N.C. 785, 147 S.E.2d 377 (1966).

Cited in State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

§ 20-9. What persons shall not be licensed.

(d) No operator's or chauffeur's license shall be issued to any applicant who has been previously adjudged insane or an idiot, imbecile, or feeble-minded, and who has not at the time of such application been restored to competency by judicial decree or released from a hospital for the insane or feeble-minded upon a certificate

of the superintendent that such person is competent, nor then unless the Department is satisfied that such person is competent to operate a motor vehicle with safety to persons and property.

(g) The Department may issue an operator's or chauffeur's license to any applicant covered by subsection (e) of this section under the following conditions:

- (1) The Department may issue a license to any person who is afflicted with or suffering from physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Department a certificate in the form prescribed in subdivision (2). Unless sooner revoked, suspended or cancelled, such license continues in force as long as the licensee presents to the Department one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six months intervals where in his opinion public safety demands. In no event shall a license issued pursuant to this section be valid beyond the birthday of the licensee in the fourth year following the year of issuance, at which time the license is subject to renewal.
- (2) The Department shall not issue a license pursuant to this section unless the applicant has submitted to a physical examination by a physician or surgeon duly licensed to practice medicine in this State and unless such examining physician or surgeon has completed and signed the certificate required by subdivision (1). Such certificate shall be devised by the Commissioner with the advice of qualified experts in the field of diagnosing and treating physical and mental disorders as he may select to assist him and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not it would be a hazard to public safety to permit the applicant to operate a motor vehicle, including, if such is the fact, the examining physician's statement that the applicant is under medication and treatment and that such person's physical or mental disability is controlled. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether a license should be issued to the applicant.
- (3) The Commissioner is not bound by the recommendation of the examining physician but shall give fair consideration to such recommendation in exercising his discretion in acting upon the application, the criterion being whether or not, upon all the evidence, it appears that it is safe to permit the applicant to operate a motor vehicle. The burden of proof of such fact is upon the applicant. In deciding whether to issue or deny a license, the Commissioner may be guided by opinion of experts in the field of diagnosing and treating the specific physical or mental disorder suffered by an applicant and such experts may be compensated for their services on an equitable basis. The Commissioner may also take into consideration any other factors which bear on the issue of public safety.
- (4) Whenever a license is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the applicant filed with the Department within 10 days after receipt of such denial. The reviewing board shall consist of the Commissioner or his authorized representative and four persons designated by the chairman of the State Board of Health. The persons designated by the chairman of the State Board of Health shall be either members of the State Board of Health or physicians duly licensed to practice medicine in this State. The members so designated by the chairman of the State Board

of Health shall receive the same per diem and expenses as provided by law for members of the State Board of Health, which per diem and expenses shall be charged to the same appropriation as per diems and expenses for members of the State Board of Health. The Commissioner or his authorized representative, plus any two of the members designated by the chairman of the State Board of Health, constitute a quorum. The procedure for hearings authorized by this section shall be as follows:

- a. Applicants shall be afforded an opportunity for hearing, after reasonable notice of not less than 10 days, before the review board established by subdivision (4). The notice shall be in writing and shall be delivered to the applicant in person or sent by registered mail, with return receipt requested. The notice shall state the time, place, and subject of the hearing.
- b. The review board may compel the attendance of witnesses and the production of such books, records and papers as it desires at a hearing authorized by the section. Upon request of an applicant, a subpoena to compel the attendance of any witness or a subpoena duces tecum to compel the production of any books, records, or papers shall be issued by the board. Subpoenas shall be directed to the sheriff of the county where the witness resides or is found and shall be served and returned in the same manner as a subpoena in a criminal case. Fees of the sheriff and witnesses shall be the same as that allowed in the county recorder's court or district court in cases before that court and shall be paid in the same manner as other expenses of the Department of Motor Vehicles are paid. In any case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the district court or superior court where such disobedience, neglect or refusal occurs, or any judge thereof, on application by the board, shall compel obedience or punish as for contempt.
- c. A hearing may be continued upon motion of the applicant for good cause shown with approval of the board or upon order of the board.
- d. The board shall pass upon the admissibility of evidence at a hearing but the applicant affected may at the time object to the board's ruling, and, if evidence offered by an applicant is rejected the party may proffer the evidence, and such proffer shall be made a part of the record. The board shall not be bound by common law or statutory rules of evidence which prevail in courts of law or equity and may admit and give probative value to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They may exclude incompetent, immaterial, irrelevant and unduly repetitious evidence. Uncontested facts may be stipulated by agreement between an applicant and the board and evidence relating thereto may be excluded. All evidence, including records and documents in the possession of the Department of Motor Vehicles or the board, of which the board desires to avail itself shall be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The board shall prepare an official record, which shall include testimony and exhibits. A record of the testimony and other evidence submitted shall be taken, but it shall not be

necessary to transcribe shorthand notes or electronic recordings unless requested for purposes of court review.

- e. Every decision and order adverse to an applicant shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the board's conclusions on each contested issue of fact. Counsel for applicant, or applicant, if he has no counsel, shall be notified of the board's decision in person or by registered mail with return receipt requested. A copy of the board's decision with accompanying findings and conclusions shall be delivered or mailed upon request to applicant's attorney of record or to applicant, if he has no attorney.
- f. Actions of the reviewing board are subject to judicial review as provided under article 33 of chapter 143 of the General Statutes
- g. An applicant or licensee who has been denied a license pursuant to a hearing before the board may not file a new application until the expiration of two years after the date of such denial by the board.
- h. All records and evidence collected and compiled by the Department and the reviewing board shall not be considered public records within the meaning of chapter [section] 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. All information furnished by or on behalf of an applicant under this section shall be without prejudice and shall be for the use of the Department, the reviewing board or the court in administering this section and shall not be used in any manner as evidence, or for any other purposes in any trial, civil or criminal. (1935, c. 52, s. 4; 1951, c. 542, s. 3; 1953, c. 773; 1955, c. 1187, s. 7; 1967, cc. 961, 966.)

Editor's Note.—The first 1967 amendment struck out "grand mal epileptic" following "imbecile" near the beginning of subsection (d).

The second 1967 amendment added subsection (g).

As the rest of the section was not changed by the amendments, it is not set out.

The word "section" in brackets in paragraph h of subdivision (4), subsection (g), is suggested as a correction of "chapter," which appears in the 1967 Session Laws.

Out-of-State Suspension as Basis for Revocation.—Under this section the Department of Motor Vehicles must apply the period of revocation of the other state, since the person was a resident of the other state and was subject to and controlled by the laws of that state at the time the offense was committed. *Parks v. Howland*, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

§ 20-10. Age limits for drivers of public passenger-carrying vehicles.—It shall be unlawful for any person, whether licensed under this article or not, who is under the age of twenty-one years to drive a motor vehicle while in use as a public passenger-carrying vehicle. For purposes of this section, an ambulance when operated for the purpose of transporting persons who are sick, injured, or otherwise incapacitated shall not be treated as a public passenger-carrying vehicle.

No person fourteen years of age or under, whether licensed under this article or not, shall operate any road machine, farm tractor or motor driven implement of husbandry on any highway within this State. Provided any person may operate a road machine, farm tractor, or motor driven implement of husbandry upon a highway adjacent to or running in front of the land upon which such person

lives when said person is actually engaged in farming operations. (1935, c. 52, s. 5; 1951, c. 764; 1967, c. 343, s. 4.)

Editor's Note. — The 1967 amendment added the second sentence of the first paragraph.

§ 20-11. Application of minors. — (a) The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a misdemeanor.

The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them.

(b) The Department may grant an application for a temporary learner's permit of any minor under the age of sixteen, who otherwise meets the requirements for licensing under this section, when such application is signed by both the applicant and his or her parent or guardian. Such temporary learner's permit shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of thirty days or until he becomes sixteen years of age, whichever is the longer period, while such minor is accompanied by a parent or guardian who is licensed under this chapter to operate a motor vehicle and who is actually occupying a seat beside the driver. Provided, however, a learner's permit as herein provided shall be issued only to those applicants who have reached the age of fifteen and one-half years. In the event a minor issued a temporary learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the learner's permit shall be cancelled. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171; 1967, c. 694; 1969, c. 37.)

Editor's Note. —

The 1969 amendment deleted "during

The 1967 amendment, effective July 1, daylight hours" following "highways" in 1967, added to the second paragraph of the second sentence of subsection (b), subsection (a) the provisions following the reference to G.S. 20-88.1.

§ 20-13. Mandatory revocation of license of provisional licensee.

(b) The basis for departmental action, and the period of suspension, shall be as follows:

- (1) For conviction of a second motor vehicle moving violation, in any twelve-month period, thirty (30) days;
- (2) For conviction of a third such violation, in any twelve-month period, three (3) months;
- (3) For conviction of a fourth such violation, in any twelve-month period, one (1) year.

(1967, c. 295, s. 1.)

Editor's Note. —

The 1967 amendment deleted former subdivision (4) of subsection (b), relating to suspension for conviction of one viola-

tion in connection with an accident resulting in personal injury or property damage of one hundred dollars or more.

As the rest of the section was not affected by the amendment, it is not set out.

Revocation under this section is mandatory and not subject to court review. Wing v. Godwin, 271 N.C. 426, 156 S.E.2d 683 (1967).

§ 20-13.1. Revocation of license of provisional licensee upon conviction of moving violation in connection with accident resulting in personal injury or property damage.—The operator's license of a provisional licensee as defined in G.S. 20-13 may be suspended by the Department for a period of 60 days upon notice of such licensee's conviction of one motor vehicle moving violation in connection with a motor vehicle accident resulting in personal injury or property damage of more than one hundred dollars (\$100.00). Upon suspending any license as herein provided, the Department shall immediately notify the licensee, in writing, and, upon the request of the licensee's parent or guardian or someone standing in loco parentis to the child, afford him an opportunity for a hearing as early as practical within 20 days after receipt of the request in the county wherein the licensee resides or at some other place mutually agreed upon. Upon such hearing, the duly authorized agents of the Department may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant documents and may require reexamination. Upon such hearing, the Department may rescind, modify or affirm its order of suspension. (1967, c. 295, s. 2.)

§ 20-14. Duplicate licenses.—In the event that an operator's or chauffeur's license is lost or destroyed, or if it is necessary to change the name or address thereon, the person to whom the license is issued may, upon payment of a fee of one dollar (\$1.00) and upon furnishing proof satisfactory to the Department that the license has been lost or destroyed, or that the person's name or address has been changed, obtain a duplicate or substitute license. (1935, c. 52, s. 9; 1943, c. 649, s. 2; 1969, c. 783, s. 2.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, rewrote this section.

§ 20-15. Authority of Department to cancel license.

Quoted in Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

§ 20-16. Authority of Department to suspend license.

(c) The Department shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this article as an operator or chauffeur and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission for the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Department of Motor Vehicles as a basis for suspension or revocation of operator's or chauffeur's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3

Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No operator's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
All other moving violations	2

The [above] provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Over loads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Public drunk within a vehicle
Possession of liquor
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever a licensee accumulates as many as four points hereunder, the Department shall mail a letter of warning to the licensee at his last known address, but failure to receive such warning letter shall not prevent a suspension under this subsection. Whenever a licensee accumulates as many as seven points, the Department may request the licensee to attend a conference regarding such licensee's driving record. The Department may also afford the licensee who has accumulated as many as seven points an opportunity to attend a driver improvement clinic operated by the Department and, upon the successful completion of the course taught at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one such deduction of points shall be made on behalf of any licensee.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than sixty (60) days; the second such suspension shall not exceed six (6) months and any subsequent suspension shall not exceed one year.

Whenever the operator's or chauffeur's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Department, a period of probation may be substituted

for suspension or for any unexpired period of suspension under G.S. 20-16 (a) (5) and this subsection. Such period of probation shall not exceed one year, and any violation of probation during the probation period shall result in a suspension for the period originally provided for under this subsection or for the remainder of any unexpired suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(1967, c. 16.)

Editor's Note.—

The 1967 amendment added, at the end of the first paragraph of subsection (c), the provision as to points "heretofore" charged for violation of the motor vehicle inspection laws and added to the list of offenses for which no points shall be assessed "Failure to display current inspection certificate." The amendatory act was ratified March 7, 1967 and became effective after its ratification.

As the rest of the section was not affected by the amendment, only subsection (c) is set out.

Moving Violations.—The legislature considered the enumerated offenses in this section, including "no operator's license," to be moving violations. *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding and reckless driving.

Cited in *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

Cross Reference. — As to mandatory revocation of license for refusal to submit to chemical test to determine alcoholic content of blood, see § 20-16.2.

§ 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests.—(a) Any person who operates a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 shall be deemed to have given consent, subject to the provisions of G.S. 20-139.1, to a chemical test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the request of a law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 while under the influence of intoxicating liquor. The law-enforcement officer shall designate which of the aforesaid tests shall be administered. Before any of the tests shall be administered, the accused person shall be permitted to call an attorney and to select a witness to view for him the testing procedures; providing, however, that the testing procedures shall not be delayed for these purposes for a period of time of over thirty minutes from the time the accused person is notified of these rights.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section and the test or tests may be administered, subject to the provisions of G.S. 20-139.1.

(c) If a person under arrest who wilfully refuses upon the request of a law-enforcement officer to submit to a chemical test designated by the law-enforcement officer as provided in subsection (a) of this section, none shall be given, but the Department, upon the receipt of a sworn report of the law-enforcement officer or other witness that the arrested person had been driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had wilfully refused to submit to the test upon the request of the law-enforcement officer, shall revoke his driving privilege for a period of sixty days. Provided, if the person so arrested shall be acquitted of the charge of driving

while under the influence of intoxicating liquor, the clerk of the court in which such person is tried shall immediately notify the Department of such acquittal and the Department upon receipt of notice of acquittal shall immediately order the revocation be rescinded.

(d) Upon receipt of the sworn report required by G.S. 20-16.2 (c) the Department shall immediately notify the arrested person that his license to drive is revoked immediately unless said person requests in writing within three days of receipt of notice of revocation a hearing. If such person requests in writing a hearing, he shall retain his license until after the hearing. The hearing shall be conducted under the same conditions as hearings are conducted under the provisions of G.S. 20-16 (d) except that the scope of such a hearing for the purpose of this section shall cover the issues of whether the person had been driving a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he refused to submit to the test upon the request of the officer. Whether the person was informed that his privilege to drive would be revoked if he refused to submit to the test shall be an issue. The Department shall order that the revocation either be rescinded or sustained. If the revocation is sustained, the person shall surrender his license immediately upon notification unless said license shall have been returned to him under G.S. 20-16.2 (c).

(e) If the revocation is sustained after such a hearing, the person whose driving privilege has been revoked, under the provisions of this section, shall have the right to file a petition in the superior court to review the action of the Department in the same manner and under the same conditions as is provided in G.S. 20-25.

(f) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been revoked, the Department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1.)

Editor's Note.—

The 1969 amendment, effective Sept. 1, 1969, rewrote this section.

For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

Failure by officers to advise defendant of his right to refuse to take a breathalyzer test does not render the result of the test inadmissible in evidence, defendant having impliedly consented to the test by virtue of driving an automobile on the public highways of the State, and the test having been administered after arrest and without the use of force or violence. *State v. McCabe*, 1 N.C. App. 237, 161 S.E.2d 42 (1968), decided prior to the 1969 amendment.

Refusal May Not Be Used as Assumption of Guilt.—This section does not say that if a person refuses to submit to the

test it will be used as an assumption of guilt in court. *State v. Mobley*, 273 N.C. 471, 160 S.E.2d 334 (1968), decided prior to the 1969 amendment.

Request Made by Officer to Technician.

—That portion of this section which provides that "the test or tests shall be administered upon request of a law-enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State . . . while under the influence of intoxicating liquor," refers to the request being made by the officer to the technician who will give the test, rather than being directed to the suspect. *State v. Randolph*, 273 N.C. 120, 159 S.E.2d 324 (1968), decided prior to the 1969 amendment.

§ 20-17. Mandatory revocation of license by Department.

(8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting

or allowing another to commit any of the foregoing acts. (1935, c. 52, s. 12; 1947, c. 1067, s. 14, 1967, c. 1098, s. 2.)

Editor's Note. — The 1967 amendment added subdivision (8).

As the rest of the section was not affected by the amendment, only subdivision (8) is set out.

In General. —

The revocation of a driver's license is mandatory whenever it is made to appear

that the licensee has been found guilty of "driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug." *Parks v. Howland*, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Cited in *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

§ 20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs. — (a) The Commissioner, upon receipt of notice that any person has been legally adjudged incompetent or has been admitted as an inpatient to an institution for the treatment of the mentally ill or has entered an institution for the treatment of alcoholism or drug addiction shall forthwith make inquiry into the facts for the purpose of determining whether such person is competent to operate a motor vehicle. Unless the Commissioner is satisfied that such person is competent to operate a motor vehicle with safety to persons and property, he shall revoke such person's driving privilege. No driving privilege revoked hereunder shall be restored unless and until the Commissioner is satisfied that the person is competent to operate a motor vehicle with safety to persons and property.

(b) If any person shall be adjudged as incompetent for any reason, the clerk of the court in which any such adjudication is made shall forthwith send a certified copy of abstract thereof to the Commissioner.

(c) The person in charge of every institution of any nature for the care and treatment of the mentally ill, the care and treatment of alcoholics or habitual users of narcotic drugs shall forthwith report to the Commissioner in sufficient detail for accurate identification the admission of every person.

(d) It is the intent of this section that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety of the motoring public. The Commissioner shall have authority to make such agreements as are necessary with the persons in charge of every institution of any nature for the care and treatment of the mentally ill and of alcoholics or habitual users of narcotic drugs, to effectively carry out the duty hereby imposed and the person in charge of the institutions described above shall cooperate with and assist the Commissioner of Motor Vehicles.

(e) Notwithstanding the provisions of G.S. 8-53, G.S. 8-53.2, G.S. 122-8.1 and G.S. 122-8.2, the person or persons in charge of any institution as set out in subparagraph (c) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Department of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the Department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(f) Revocations under this section may be reviewed as provided in G.S. 20-9 (g) (4). (1947, c. 1006, s. 9; 1953, c. 1300, s. 36; 1955, c. 1187, s. 16; 1969, c. 186, s. 1; c. 1125.)

Editor's Note. —

The first 1969 amendment deleted "and only then if he gives and maintains proof of financial responsibility" at the end of former subsection (b).

The second 1969 amendment rewrote this section.

§ 20-19. Period of suspension or revocation.

(e) When a license is revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Department may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration; provided, that as to a license which has been revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which license has not been restored, the Department may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration. When a new license is issued under the provisions of this subsection, it may be issued upon such terms and conditions as the Department may see fit to impose. The terms and conditions imposed by the Department may not exceed a period of three years.

(1969, c. 242.)

Editor's Note. — The 1969 amendment added the last two sentences of subsection (e).

As the rest of the section was not changed by the amendment, only subsection (e) is set out.

§ 20-20. Surrender of licenses.—Whenever any vehicle operator's or chauffeur's license issued by the Department is revoked or suspended under the terms of this chapter, the licensee shall surrender to the Department all vehicle operator's and chauffeur's licenses and duplicates thereof issued to him by the Department which are in his possession. (1935, c. 52, s. 14; 1943, c. 649, s. 4; 1967, c. 280; 1969, c. 182.)

Editor's Note. — The 1967 amendment rewrote this section.

The 1969 amendment included chauf-

feurs' licenses in this section and deleted "cancelled" preceding "revoked" near the beginning of the section.

§ 20-23.1. Suspending or revoking operating privilege of person not holding license.—In any case where the Department would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Department is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held an operator's or chauffeur's license, and the provisions of this chapter governing suspensions, revocations, issuance of a license, and driving after license suspended or revoked, shall apply in the discretion of the Department in the same manner as if the license had been suspended or revoked. (1955, c. 1187, s. 19; 1969, c. 186, s. 2.)

Editor's Note. — The 1969 amendment inserted "and" between "license" and "driving" and deleted "and filing of proof

of financial responsibility" near the end of the section.

§ 20-23.2. Suspension of license for conviction of traffic offense in federal court.—Upon receipt of notice of conviction in any court of the federal government sitting in North Carolina of the offense of driving while under the influence of intoxicating liquor, the Department is authorized to revoke the driving privilege of the person convicted in the same manner as if such conviction had occurred in a court of this State. Provided that this section shall apply only to offenses committed on highways in federal parks in this State. (1969, c. 988.)

§ 20-25. Right of appeal to court.

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions

prescribed by statute. These, under express provisions of this section, include full de novo review by a superior court judge, at the election of the licensee, in all cases except where the suspension or revocation is mandatory. *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

Discretionary suspensions, etc.

Discretionary revocations and suspensions may be reviewed by the court under this section, while mandatory revocations and suspensions may not. *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

By Trial De Novo.—

Upon the filing of a petition for review, it is the duty of the judge, after notice to

the department, "to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this article." This is more than a review as upon a writ of certiorari. It is a rehearing de novo, and the judge is not bound by the findings of fact or the conclusions of law made by the department. Else why "take testimony," "examine into the facts," and "determine" the question at issue? *Parks v. Howland*, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Applied in *Underwood v. Howland*, 1 N.C. App. 560, 162 S.E.2d 124 (1968).

§ 20-26. Records; copies furnished.

(c) The Department shall furnish copies of license records required to be kept by subsection (a) of this section to other persons, firms and corporations for uses other than official upon prepayment of the fee therefor, according to the following schedule:

(1) Limited extract copy of license record, for period up to three (3) years	\$ 1.00
(2) Complete extract copy of license record	1.00
(3) Certified true copy of complete license record	3.00

All fees received by the Department under the provisions of this subsection shall be paid into and become a part of the "Operator's and Chauffeur's License Fund." (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3.)

Editor's Note. — The 1969 amendment, effective July 1, 1969, increased the fee in subdivision (1) of subsection (c) from fifty cents to one dollar. As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 20-28. Unlawful to drive while license suspended or revoked.—

(a) Any person whose operator's or chauffeur's license has been suspended or revoked other than permanently, as provided in this chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense; provided, any person whose license has been permanently suspended or revoked under this section may apply for a new license after three years from the commencement of the permanent suspension or revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and solicitor of the court wherein a conviction for violation of this section was obtained recommend in writing to the Department that the Department examine into the facts of the case and exercise discretion in suspending or revoking the driver's license for the additional periods provided by this section, the Department shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. Any

person convicted of violating this section before or after May 14, 1959, shall be entitled to the benefit of the foregoing relief provisions.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars (\$200.00) or imprisonment in the discretion of the court not to exceed two years, or both; provided, however, the restorer of a suspended or revoked operator's or chauffeur's license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without an operator's license.

(b) Any person whose license has been permanently revoked, as provided in this article, who shall drive any motor vehicle upon the highways of the State while such license is permanently revoked shall be guilty of a misdemeanor and shall be imprisoned for not less than one year. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1406; 1959, c. 515; 1967, c. 447.)

Editor's Note.—The 1967 amendment inserted "not to exceed two years" near the middle of the third paragraph of subsection (a).

The right to operate a motor vehicle upon the public highways is not an unrestricted right but a privilege which can be exercised only in accordance with the legislative restrictions fixed thereon. *State v. Tharrington*, 1 N.C. App. 608, 162 S.E.2d 140 (1968).

Operation Must Have Occurred, etc.—

One violates this section if he operates a motor vehicle on a public highway while his operator's license is in a state of suspension. *State v. Blacknell*, 270 N.C. 103, 153 S.E.2d 789 (1967).

To constitute a violation of subsection (a) of this section there must be: (1) operation of a motor vehicle by a person; (2)

on a public highway; (3) while his operator's license is suspended or revoked. *State v. Cook*, 272 N.C. 728, 158 S.E.2d 820 (1968).

Intent Immaterial.—A person has no right to drive his car upon the highways of North Carolina after his license has been revoked and it makes no difference what the person's intentions are in so doing. *State v. Tharrington*, 1 N.C. App. 608, 162 S.E.2d 140 (1968).

Warrant Need Not Specifically Refer to Section.—A warrant charging that the named defendant did unlawfully and wilfully operate a motor vehicle on public streets or highways while his license was suspended, sufficiently charges defendant's violation of this section without specific reference to the statute. *State v. Blacknell*, 270 N.C. 103, 153 S.E.2d 789 (1967).

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.—(a) Upon receipt of notice of conviction of any person of a motor vehicle moving offense, such offense having been committed while such person's driving privilege was in a state of suspension or revocation, the Department shall revoke such person's driving privilege for an additional period of time as set forth in subsection (b) hereof.

(b) When a driving privilege is subject to revocation under this section, the additional period of revocation shall be as follows:

- (1) A first such revocation shall be for one (1) years;
- (2) A second such revocation shall be for two (2) years; and
- (3) A third or subsequent such revocation shall be permanent.

(c) Any person whose driving privilege has been permanently revoked under this section may apply for a new license after three (3) years from the commencement of the permanent revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three (3) years from the last date of revocation and that his conduct and attitude are such as to entitle him to favorable consideration. (1965, c. 286; 1969, c. 348.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, rewrote this section.

Suspension Due to Insurance Agent's Failure to Give Notice of Insurance.—

Where, by error, a licensee's insurance agent fails to furnish the Commissioner notice of the existence of liability insurance on her car and she receives notification of

suspension of her license for lack of liability insurance but she continues to drive, relying on her agent to correct his error, subsequent moving violations during the period of the suspension make revocation for an additional period mandatory under this section even though the suspension would not have been entered if the Commissioner had been properly advised of the

existence of liability insurance. *Carson v. Godwin*, 269 N.C. 744, 153 S.E.2d 473 (1967).

Former Provisions Construed. — See *Underwood v. Howland*, 274 N.C. 473, 164 S.E.2d 2 (1968).

Applied in *Underwood v. Howland*, 1 N.C. App. 560, 162 S.E.2d 124 (1968).

§ 20-30. Violations of license provisions.

(5) To use a false or fictitious name or give a false or fictitious address in any application for an operator's or chauffeur's license, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.

(1967, c. 1098, s. 1.)

Editor's Note. — The 1967 amendment added "or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts" at the end of the first sentence in subdivision (5).

As the rest of the section was not affected by the amendment, only subdivision (5) is set out.

§ 20-35. Penalties for misdemeanor.

Cross Reference. — As to jurisdiction of prosecution under this section, see notes to §§ 7A-271 and 7A-272.

This section and § 20-7, being in pari materia, must be construed together, and, if possible, they must be reconciled and harmonized. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

Excessive Penalty. — Any person convicted of operating a motor vehicle over any highway in this State without having first been licensed as such operator, in

violation of § 20-7 (a), is guilty of a misdemeanor; and, under § 20-7 (n) and subsection (b) of this section, is subject to punishment by imprisonment for a term of not more than six months. The superior court, even if it has jurisdiction in other respects, has no authority to pronounce judgment imposing a prison sentence of two years for this criminal offense. *State v. Wall*, 271 N.C. 675, 157 S.E.2d 363 (1967).

ARTICLE 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.2. Handicapped drivers—display of distinctive flags. — Handicapped or paraplegic drivers of motor vehicles are authorized when getting into and out of such vehicles, or when in distress, to display a white flag of approximately seven and one-half inches in width and thirteen inches in length, with the letter "H" thereon in red color with an irregular one-half inch red border. Said flag shall be of reflective material so as to be readily discernible under darkened conditions and shall be issued under § 20-37.3. (1967, c. 296, s. 2.)

§ 20-37.3. Handicapped drivers — issuance of flags and cards. — The Commissioner of Motor Vehicles may, upon application and payment of a fee of two dollars (\$2.00), issue to any handicapped person a distress flag as described in § 20-37.2, and a card which shall be applicant's authority to use such flag. This card shall set forth the applicant's name, address, date of birth, physical apparatus, if any, needed to operate a motor vehicle, and other pertinent facts which the Commissioner of Motor Vehicles deems desirable. The card and flag issued to an applicant shall bear corresponding numbers. In the event of loss or destruction of

such flag a replacement may be issued upon the payment of the sum of one dollar (\$1.00) by the applicant. The Commissioner of Motor Vehicles shall maintain a list of those persons to whom distress flags and cards have been issued. (1967, c. 296, s. 3.)

§ 20-37.4. Handicapped drivers—unauthorized use of flag; violation of §§ 20-37.2 to 20-37.5.—Any person who is not a handicapped or paraplegic person who uses the above-mentioned flag or facsimile thereof as a distress signal or for any other purpose or any other person who violates any provision of §§ 20-37.2 to 20-37.5 shall be guilty of a misdemeanor. (1967, c. 296, s. 4.)

§ 20-37.5. Handicapped drivers—definition.—As used herein handicapped or paraplegic drivers shall mean:

- (1) Any person who has impairments that, regardless of cause or manifestation, for all practicable purposes, confines such person to a wheelchair.
- (2) Any person who has impairments that cause such person to walk with difficulty or insecurity and includes but is not limited to those persons using braces or crutches, amputees, arthritics, spastics and those with pulmonary or cardiac ills who may be semiambulatory. (1967, c. 296, s. 5.)

ARTICLE 3.

Motor Vehicle Act of 1937.

Part 1. General Provisions.

§ 20-38. Definitions of words and phrases.

(20) **Passenger Vehicles.**— a. Excursion passenger vehicles.

Passenger vehicles kept in use for the purpose of transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles.

Passenger motor vehicles transporting passengers for compensation; but this classification shall not include motor vehicles of nine-passenger capacity or less operated as ambulances or operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day, nor shall this classification include automobiles operated by the owner where the cost of operation is shared by the passengers on a "share the expense" plan, nor shall this classification include motor vehicles transporting students for the public school system when said motor vehicles are so transporting under contract with the State Board of Education, nor shall this classification include motor vehicles leased to the United States of America or any of its agencies when such lease agreement is on a nonprofit basis.

c. Common carriers of passengers.

Passenger motor vehicles operated under a franchise certificate issued by the Utilities Commission under §§ 62-121.5 through 62-121.79, for operation on the public highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. **Motorcycle.**

Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport prop-

erty, and three-wheeled vehicles while being used by law-enforcement agencies.

e. U-drive-it passenger vehicles.

Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee; provided, this shall not include passenger motor vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person, firm, or corporation. Provided, further that passenger vehicles leased or rented to public school authorities for the purpose of driver-training instruction shall not be included in this designation.

f. Ambulance.

A motor vehicle equipped for transporting wounded, injured or sick persons.

g. Private passenger vehicles.

All other passenger vehicles not included in the above definitions.

(24) Property-Hauling Vehicles.—a. Exempt for hire vehicles.

All motor vehicles used for the transportation of property for hire but not licensed as common carriers or contract carriers of property under franchise certificates or permits issued by the Utilities Commission pursuant to G.S. 62-262 and other provisions of chapter 62 of the General Statutes, or by the Interstate Commerce Commission; provided, that the term "for hire" as used herein shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

1. The transportation of farm crops or products, including logs, bark, pulp and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.
2. The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor or trailer in a for hire operation.
3. The transportation of merchandise hauled for neighborhood farmers incidentally and not as regular business in going to and from farms and primary markets.
4. The transportation of T.V.A. or A.A.A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.
5. The transportation of fuel for the exclusive use of the public schools of the State.
6. Motor vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract made with the United States or the extension or renewal of such contract.
7. Vehicles which are leased for a term of one year or more to the same person, firm or corporation when used ex-

clusively by such person, firm or corporation in transporting its own property.

b. Common carrier of property vehicles.

Every motor vehicle used for the transportation of property which is certified a common carrier by the Utilities Commission or the Interstate Commerce Commission.

c. Private hauler vehicles.

All motor vehicles used for the transportation of property not falling within one of the above defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used exclusively for camping activities shall be classified as private passenger vehicles.

d. Semitrailer.

Every vehicle without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of its weight and/or its load rests upon or is carried by the pulling vehicle.

e. Trailers.

Every vehicle without motive power designed for carrying property or persons wholly on its own structure and to be drawn by a motor vehicle. This shall include so-called pole trailers or a pair of wheels used primarily to balance a load, rather than for purposes of transportation.

f. Contract carrier of property vehicles.

Every motor vehicle used for the transportation of property under a franchise permit of a regulated contract carrier issued by the North Carolina Utilities Commission under G.S. 62-262 or the Interstate Commerce Commission.

(26) Resident.—Any individual who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the individual is not a resident of the State.

(1967, cc. 201, 399; c. 1095, ss. 3, 4; 1969, c. 561, s. 2.)

Editor's Note.—

The first 1967 amendment rewrote paragraph d of subdivision (20).

The second 1967 amendment inserted "operated as ambulances or" near the beginning of paragraph b of subdivision (20), inserted present paragraph f in subdivision (20) and redesignated former paragraph f of subdivision (20) as paragraph g.

The third 1967 amendment, effective Feb. 15, 1968, rewrote that portion of subdivision (24) a preceding the words "provided, that the term 'for hire' as used herein" and added paragraph f thereto.

The 1969 amendment rewrote subdivision (26).

As only subdivisions (20), (24) and (26) were affected by the amendments, the rest of the section is not set out.

Bicycle.—

The operation of a bicycle upon a public highway is governed by the rules gov-

erning motor vehicles insofar as the nature of the vehicle permits. *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966).

A bicycle is a vehicle and its rider is a driver within the meaning of the Motor Vehicle Law. *Lowe v. Futrell*, 271 N.C. 550, 157 S.E.2d 92 (1967).

A mobile home is a motor vehicle under subdivision (17), and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329 (1968).

Applied in *Mims v. Dixon*, 272 N.C. 256, 158 S.E.2d 91 (1967).

Quoted in *Galloway v. Hartman*, 271 N.C. 372, 156 S.E.2d 727 (1967).

Stated in *Wilson v. J.W. Dunn Co.*, 1 N.C. App. 65, 159 S.E.2d 373 (1968).

Cited in *Champion v. Waller*, 268 N.C. 426, 150 S.E.2d 783 (1966); *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

Part 2. Authority and Duties of Commissioner and Department.

§ 20-42. Authority to administer oaths and certify copies of records.

(b) The Commissioner and such officers of the Department as he may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record of the Department, charging a fee of fifty cents (50¢) for each document so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification. Provided that any copy of any record of the Department furnished to State, county, municipal and court officials of this State for official use shall be furnished without charge. (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1; 1967, c. 691, s. 41; c. 1172.)

Editor's Note. — Session Laws 1967, c. 1172, added the proviso at the end of subsection (b).

Session Laws 1967, c. 691, s. 41, effective July 1, 1967, had added a last sentence to subsection (b) reading: "The Department shall furnish certified copies of any record required to be kept by the Depart-

ment to State, county, municipal and court officials of the State for official use only, without charge."

As subsection (a) was not affected by the amendments, it is not set out.

Applied in *State v. Blacknell*, 270 N.C. 103, 153 S.E.2d 789 (1967).

§ 20-47. Department may summon witnesses and take testimony.**Cross References.**—

As to penalties for persons convicted

of misdemeanors for violations of this article, see § 20-176.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50. Owner to secure registration and certificate of title.

Opinions of Attorney General.—Mr. Eric L. Gooch, Director, Sales and Use Tax Division, N.C. Department of Revenue, 7/8/69.

tory provisions of the statutes relating to the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329 (1968).

Cited in *State v. White*, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

A mobile home is a motor vehicle under § 20-38 (17), and is subject to the mandatory provisions of the statutes relating to

the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329 (1968).

§ 20-52. Application for registration and certificate of title.

A mobile home is a motor vehicle under § 20-38 (17), and is subject to the mandatory provisions of the statutes relating to

the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329 (1968).

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsection (a) and (b) of this section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Department. Any person who de-

livers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a misdemeanor. (1961, c. 835, s. 4; 1967, c. 863.)

Editor's Note. — The 1967 amendment rewrote subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

A mobile home is a motor vehicle under

§ 20-38 (17), and is subject to the mandatory provisions of the statutes relating to the registration of motor vehicles in this State. *King Homes, Inc. v. Bryson*, 273 N.C. 84, 159 S.E.2d 329 (1968).

§ 20-58. Perfection by indication of security interest on certificate of title. — Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

- (1) If the vehicle is not registered in this State, the application for notation of a security interest shall be the application for certificate of title provided for in G.S. 20-52.
- (2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Department, signed by the debtor, and containing the amount, date and nature of the security agreement, and the name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless it is in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition, contain the name and address of such prior secured party.
- (3) If the application for notation of security interest is made in order to continue the perfection of a security interest perfected in another jurisdiction, it may be signed by the secured party instead of the debtor. Such application shall be accompanied by documentary evidence of a perfected security interest. No such application shall be valid unless an application for a certificate of title has been made in North Carolina. (1937, c. 407, s. 22; 1955, c. 554, s. 2; 1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Editor's Note. —

Session Laws 1969, c. 838, effective Oct. 1, 1969, rewrote §§ 20-58 through 20-58.8, relating to notation of security interest on certificates of title, so as to make them conform to the Uniform Commercial Code.

Section 2 of the 1969 act provides: "This act shall not be construed so as to invali-

date any security interest in a motor vehicle properly perfected in North Carolina prior to the effective date of this act."

For case law survey as to credit transactions, see 44 N.C.L. Rev. 956 (1966).

Opinions of Attorney General. — Mr. Eric L. Gooch, Director, Sales and Use Tax Division, N.C. Department of Revenue, 7/8/69.

§ 20-58.1. Duty of the Department upon receipt of application for notation of security interest. — (a) Upon receipt of an application for notation of security interest, the required fee and accompanying documents required by G.S. 20-58, the Department, if it finds the application and accompanying documents in order, shall either endorse upon the certificate of title or issue a new certificate of title containing, the name and address of each secured party, the amount of each security interest, and the date of perfection of each security interest as determined by the Department. The Department shall deliver or mail the certificate to the first secured party named in it and shall also notify the new secured party that his security interest has been noted upon the certificate of title.

(b) If the certificate of title is in the possession of some prior secured party, the Department, when satisfied that the application is in order, shall procure the certificate of title from the secured party in whose possession it is being held, for the sole purpose of noting the new security interest. Upon request of the

Department, a secured party in possession of a certificate of title shall forthwith deliver or mail the certificate of title to the Department. Such delivery of the certificate does not affect the rights of any secured party under his security agreement. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.2. Date of perfection. — If the application for notation of security interest with the required fee is delivered to the Department within ten days after the date of the security agreement, the security interest is perfected as of that date. Otherwise, the security interest is perfected as of the date of delivery of the application to the Department. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.3. Notation of assignment of security interest on certificate of title. — An assignee of a security interest may have the certificate of title endorsed or issued with the assignee named as the secured party, upon delivering to the Department on a form prescribed by the Department, with the required fee, an assignment by the secured party named in the certificate together with the certificate of title. The assignment must contain the address of the assignee from which information concerning the security interest may be obtained. If the certificate of title is in the possession of some other secured party the procedure prescribed by G.S. 20-58.1 (b) shall be followed. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.4. Release of security interest. — (a) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of the secured party, the secured party shall within ten days after demand and, in any event, within thirty days, execute a release of his security interest, in the space provided therefor on the certificate or as the Department prescribes, and mail or deliver the certificate and release to the next secured party named therein, or if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction or other discharge of a security interest in a vehicle for which the certificate of title is in the possession of a prior secured party, the secured party whose security interest is satisfied shall within ten days execute a release of his security interest in such form as the Department prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Department which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.

(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Department because it is in possession of a prior secured party, the Department, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent security interest, following which the Department shall return the certificate of title to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the secured party the release

contemplated by this section, the owner may exhibit to the Department such evidence as may be available showing satisfaction or other discharge of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Department may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least fifteen days' notice of the pendency thereof shall be given to the secured party at his last known address by the Department by registered letter. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.5. Duration of security interests in favor of firms which cease to do business. — Any security interest recorded in favor of a firm or corporation which, since the recording of such security interest, has dissolved, ceased to do business, or gone out of business for any reason, and which remains of record as a security interest of such firm or corporation for a period of more than three years from the date of the recording thereof, shall become null and void and of no further force and effect. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.6. Duty of secured party to disclose information. — A secured party named in a certificate of title shall, upon written request of the Department, the owner or another secured party named on the certificate, disclose information as to his security agreement and the indebtedness secured by it. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.7. Cancellation of certificate. — The cancellation of a certificate of title shall not, in and of itself, affect the validity of a security interest noted on it. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.8. Applicability of §§ 20-58 through 20-58.8; use of term "lien". — (a) The provisions of G.S. 20-58 through 20-58.8 apply to the perfection of security interests pursuant to G.S. 25-9-302.

(b) The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

- (1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;
- (2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or
- (3) A security interest in a vehicle created by a manufacturer or by a dealer in new or used vehicles who holds the vehicle in his inventory. Such security interests shall be perfected by filing a financing statement under article 9 of the Uniform Commercial Code.

(c) When the term "lien" is used in other sections of this chapter, or has been used prior to October 1, 1969, with reference to transactions governed by G.S. 20-58 through 20-58.8, to describe contractual agreements creating security interests in personal property, the term "lien" shall be construed to refer to a "security interest" as the term is used in G.S. 20-58 through 20-58.8 and the Uniform Commercial Code. (1961, c. 835, s. 6; 1969, c. 838, s. 1.)

Cross Reference. — See Editor's note under § 20-58.

§ 20-58.9: Repealed by Session Laws 1969, c. 838, s. 3, effective October 1, 1969.

Cross Reference. — See Editor's note under § 20-58.

§ 20-63. Registration plates to be furnished by the Department; requirements; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

(h) **Commission Contracts for Issuance of Plates and Certificates.**—All registration plates, registration certificates and certificates of title issued by the Department, outside of those issued from the Raleigh offices of the said Department and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Department for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Department shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Department. In the event the Department is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Department. Whenever registration plates, registration certificates and certificates of title are issued by the Department through commission contract arrangements, the Department shall provide proper supervision of such distribution. Commission contracts entered into hereunder shall provide for the payment of compensation at the rate of twenty-seven cents (27¢) per registration plate. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted "twenty-seven cents (27¢)" for "twenty-two cents (22¢)" near the end of subsection (h).

As the rest of the section was not changed by the amendment, only subsection (h) is set out.

The maximum punishment for a violation of this section or § 20-111 would be that prescribed by § 20-176 (b), namely, a fine of not more than one hundred dollars or imprisonment in the county or municipal jail for not more than sixty days, or both such fine and imprisonment. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

§ 20-63.1. Department may cause plates to be reflectorized. — The Department of Motor Vehicles is hereby authorized to cause vehicle license plates for 1968 and future years to be completely treated with reflectorized materials designed to increase visibility and legibility of license plates at night. (1967, c. 8.)

§ 20-64. Transfer of registration plates to another vehicle.

(f) Whenever the owner of a registered vehicle transfers or assigns his interest to another, such transferor may, by surrendering the registration plate to the Department, secure a refund of the unexpired portion of such plate on a monthly basis, beginning the first day of the month following surrender of the plate to the Department, provided, that the annual license fee for such surrendered plate is sixty dollars (\$60.00) or more.

(1967, c. 995.)

Editor's Note.—

The 1967 amendment rewrote subsection (f).

As the other subsections were not affected by the amendment, they are not set out.

§ 20-71. Altering or forging certificate of title, registration card or application, a felony.

Cross Reference.—

As to penalty for a violation of this

article declared to constitute a felony, see
§ 20-177.

§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.

Purpose, etc.—

The purpose of this section is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another. It does not and was not intended to have any other force or effect. Phillips v. Utica Mut. Ins. Co., 4 N.C. App. 655, 167 S.E.2d 542 (1969).

When Section Applies.—This section applies when plaintiff, upon sufficient allegations, seeks to hold the owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. Phillips v. Utica Mut. Ins. Co., 4 N.C. App. 655, 167 S.E.2d 542 (1969).

The section was plainly meant to apply in a civil case. State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

This section creates a presumption of ownership only in those specific instances enumerated. State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

Defendant's testimony that he was the registered owner of a truck made a prima facie case of agency sufficient to support, but not compel, a verdict against him under the doctrine of respondeat superior for damages proximately caused by the negligence of the operator thereof. Brown v. Nesbitt, 271 N.C. 532, 157 S.E.2d 85 (1967).

The two subsections, etc.—

In accord with 1st paragraph in original. See State v. Cotten, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

Proof of Ownership Alone Takes Case, etc.—

Admission of ownership of the vehicle involved in the collision requires the submission to the jury of the question of liability under the doctrine of respondeat superior. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

Proof of ownership is prima facie proof of agency. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

Upon a showing of ownership, the artificial force of the prima facie rule under this section seems to permit a finding of agency. Torres v. Smith, 269 N.C. 546, 153 S.E.2d 129 (1967).

But Defendant May Be Entitled to Instruction.—

Where plaintiff relied solely on this section to take the issue of agency to the jury and defendant's evidence tended to show that the driver was on a purely personal mission at the time of the accident, defendant, without request therefor, was entitled to a peremptory instruction, related directly to the particular facts shown by defendant's positive evidence, to answer the issue of agency in the negative. A general instruction to so answer the issue if the jury believed the facts to be as defendant's evidence tended to show, without relating the instruction directly to defendant's evidence in the particular case, was insufficient. Belman v. Overton, 270 N.C. 400, 154 S.E.2d 538 (1967).

It Merely Creates, etc.—

This section merely creates a rule of evidence. Duckworth v. Metcalf, 268 N.C. 340, 150 S.E.2d 485 (1966).

This section was designed and intended to, and does, establish a rule of evidence which facilitates proof of ownership and agency in automobile collision cases where one of the vehicles is operated by a person other than the owner. It was not enacted and designed to render proof unnecessary, nor does proof of registration or ownership make out a prima facie case for the jury on the issue of negligence. Neither is it sufficient to send the case to the jury, or support a finding favorable to plaintiff under the negligence issue, or to support a finding against a defendant on the issue of negligence. Branch v. Dempsey, 265 N.C. 733, 145 S.E.2d 395 (1965).

This section was designed and intended to apply, and does apply, only in those cases where the plaintiff seeks to hold an owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. Its purpose is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another or for the death of a person, arising out of an accident or collision involving a motor vehicle. It does not have, and was not intended to have, any

other force or effect. *State v. Cotten*, 2 N.C. App. 305, 163 S.E.2d 100 (1968).

And Does Not Change, etc.—

This section does not abrogate the well-settled rule of law that mere ownership of an automobile does not impose liability upon the owner for injury to another by the negligent operation of the vehicle on the part of a driver, who was not, at the time of the injury, the employee or agent of the owner or who was not, at such time, acting in the course of his employment or agency. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

Nor Compel a Verdict against Owner.— Proof of ownership of the automobile by one not the driver makes out a *prima facie* case of agency of the driver for the owner at the time of the driver's negligent act or omission, but it does not compel a verdict against the owner upon the principle of *respondeat superior*. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

Effect of Establishing Facts with Respect to Agency. — Whenever the facts with respect to agency are established, without contradiction, it is the duty of the court to disregard this section, even to the point of setting aside a verdict which this section permits. *Manning v. State Farm Mut. Auto. Ins. Co.*, 243 F. Supp. 619 (W.D.N.C. 1965).

Beginning and Termination of Presumption as to Agency. — This section creates no presumption and gives rise to no inference as to the existence of any agency relation before the operation of the vehicle begins or after it stops. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

In the absence of evidence of agency, apart from the mere act of driving a motor vehicle registered in the name of another, the agency must be deemed to have terminated when the driver has brought the vehicle to a final stop and has left it. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Presumption Is Not One, etc.—

The burden of proof continues to rest upon the plaintiff to prove an agency relationship between the driver and the owner at the time of the driver's negligence which caused the injury. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

This section is simply a rule of evidence to shift the burden of going forward with the proof to those persons better able to establish the true facts than are plaintiffs. *Manning v. State Farm Mut. Auto.*

Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965).

Both Negligence and Agency Must Be, etc.—

In accord with 5th paragraph in original. See *Belmany v. Overton*, 270 N.C. 400, 154 S.E.2d 538 (1967).

Non constat the statute, it is still necessary for the party aggrieved to allege both negligence and agency in his pleading and to prove both at the trial. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965); *Belmany v. Overton*, 270 N.C. 400, 154 S.E.2d 538 (1967).

No Authority for Vicarious Admissions of Negligence. — Sections 20-166 and 20-166.1 do not give blanket authority to whomsoever may drive a vehicle registered in the name of another to make statements as to the manner of his driving so as to cause such statements to be competent in evidence against the registered owner as vicarious admissions of negligence for which owner is legally liable. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

This section makes no reference to any authority of the driver to affect the owner's liability to other persons otherwise than by the driver's conduct in the operation and control of the vehicle. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Admission by defendant truck owner that his truck was being operated by codefendant is sufficient, as against such owner, to permit a finding that codefendant was driving the truck and, therefore, to bring into operation this section making such fact *prima facie* proof that codefendant was the agent of the truck owner and was driving the truck in the course of his employment as such agent. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Departure from Course of Employment. — It is elementary that a principal or employer is not liable for injury due to a negligent act or omission of his agent or employee when such agent or employee has departed from the course of his employment and embarked upon a mission or frolic of his own. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

The test is whether the employee or agent was, at the time of the negligent act or omission, about his master's business. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

If there has been a total departure from the course of the master's business, the employer or principal is not liable for the

negligent act or omission of the employee during such departure from the employment relation. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

But it is not sufficient to take the servant out of the course of his employment, and thus to relieve the employer from responsibility for the negligent act or omission of the servant, that the servant at the time of such act or omission was

violating an instruction or rule of the employer or principal. *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966).

Applied in *Passmore v. Smith*, 266 N.C. 717, 147 S.E.2d 238 (1966); *Jackson v. Baldwin*, 268 N.C. 149, 150 S.E.2d 37 (1966).

Quoted in *Perkins v. Cook*, 272 N.C. 477, 158 S.E.2d 584 (1968).

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.

Cited in *Manning v. State Farm Mut. Auto. Ins. Co.*, 243 F. Supp. 619 (W.D.-N.C. 1965).

§ 20-75. When transferee is dealer or insurance company.—When the transferee of any vehicle registered under the foregoing provision of this article is a licensed dealer who holds the same for resale and operates the same only for purpose of demonstration under a dealer's number plate, or a duly licensed insurance company taking such vehicle for sale or disposal for salvage purposes where such title is taken as a part of a bona fide claim settlement transaction and only for the purpose of resale, such transferee shall not be required to register such vehicle nor forward the certificate of title to the Department as provided in § 20-73. To assign or transfer title or interest in such vehicle, the dealer or insurance company shall execute in the presence of a person authorized to administer oaths a reassignment and warranty of title on the reverse of the certificate of title in form approved by the Department, including in such reassignment the name and address of the transferee, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Department within twenty (20) days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor. (1937, c. 407, s. 39; 1961, c. 835, s. 9; 1963, c. 552, s. 5; 1967, c. 760.)

Editor's Note.—

The 1967 amendment inserted in the first

paragraph the provisions relating to insurance companies.

§ 20-77. Transfer by operation of law; sale under mechanic's or storage lien; unclaimed vehicles.

(d) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for 30 days, shall within five days after the expiration of that period, report the vehicle as unclaimed to the Department.

A vehicle left by any person whose name and address are known to, or are furnished from a reliable method of identification to, the operator or his employee is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this section forfeits all liens for storage, and, in addition thereto, the failure to make the report required by this section shall constitute a misde-

meanor punishable by a fine not to exceed fifty dollars (\$50.00) or 30 days imprisonment, or both, in the discretion of the court.

(1967, c. 562, s. 8.)

Editor's Note. — The 1967 amendment, effective at midnight June 30, 1967, rewrote subsection (d), eliminating therefrom provisions as to storage charges and the storage lien and its enforcement. See Editor's note to § 25-1-201.

As the rest of the section was not

changed by the amendment, only subsection (d) is set out.

For article concerning liens on personal property not governed by the Uniform Commercial Code, see 44 N.C.L. Rev. 322 (1966).

Part 5. Issuance of Special Plates.

§ 20-79. Registration by manufacturers and dealers.

Applied in *Brinkley v. Nationwide Mut. Ins. Co.*, 271 N.C. 301, 156 S.E.2d 225 (1967).

§ 20-79.2. Transporter registration.—(a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the foreclosure or repossession of such motor vehicles may apply to the Commissioner for special registration to be issued to and used by such person upon the following conditions:

- (1) Application for Registration.—Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
 - a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
 - b. The complete address or addresses of the place or places where the business is to be conducted.
 - c. Such further information as the Commissioner may require.
- (2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.
- (3) Fees.—The annual fee for such registration under this section or renewal thereof shall be nineteen dollars (\$19.00), plus an annual fee of six dollars (\$6.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.
- (4) Issuance of Certificate.—If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his principal place of business within thirty (30) days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.

(5) Use.—Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with foreclosure or repossession of vehicles owned or controlled by the registrant.

(6) Suspension, Revocation or Refusal to Issue or to Renew a Registration.—The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:

- a. Made a material false statement in his application;
- b. Used or permitted the use of number plates contrary to law;
- c. Been guilty of fraud or fraudulent practices; or
- d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this chapter applicable thereto.

(1969, c. 600, s. 1.)

Editor's Note.—The 1969 amendment, effective Jan. 1, 1970, substituted "nineteen dollars (\$19.00)" for "fifteen dollars (\$15.00)" and "six dollars (\$6.00)" for "five dollars (\$5.00)" in the first sentence of subdivision (3) of subsection (a).

Session Laws 1969, c. 600, s. 23 provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-80. National guard plates.—The Commissioner shall cause to be made each year a sufficient number of automobile license plates to furnish each member of the North Carolina national guard with one thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following words "National Guard." The said license plates shall be issued only to members of the North Carolina national guard, and for which license plates the Commissioner shall collect fees in an amount equal to the fees collected for the licensing and registering of private vehicles. The Adjutant General of North Carolina shall furnish the Commissioner annually with an estimate of the number of such distinctive plates required. In addition, the Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that licenses are issued, a list of the officers of the North Carolina national guard, which said list shall contain the rank of each officer listed in the order of his seniority in the North Carolina national guard, and the said license plates to be set aside for officer personnel shall be numbered beginning with the number two hundred and one and in numerical sequence thereafter up to and including the number sixteen hundred, according to seniority, the senior officer being issued the license bearing the numerals two hundred and one. Enlisted personnel applying for such distinctive plates shall present to the Department of Motor Vehicles proof of membership in the North Carolina national guard by means of certificate signed by the commanding officer of applicant on forms as may be agreed upon by the Adjutant General of North Carolina and the Department of Motor Vehicles. If a holder of such distinctive license plate shall be discharged from the North Carolina national guard under other than honorable conditions, he shall within thirty days exchange such distinctive plate for a standard plate. (1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s. 16; 1967, c. 700.)

Editor's Note.—The 1967 amendment, effective Jan 1, 1968, rewrote this section so as to provide for the issuance of special license plates to all members of the North

Carolina national guard, rather than to officers only, and so as to provide for the issuance of one plate, rather than "a set" of plates.

§ 20-81.2. Special plates for historic vehicles.—Notwithstanding any other provisions of this chapter, special license plates shall be issued upon appli-

cation with respect to any motor vehicle of the age of thirty-five years or more from the date of manufacture. Such license plates shall be of the same colors as the regular license plates and shall be issued in a separate numerical series. On the plate there shall be printed the words "Horseless Carriage," the license plate serial number, the words "North Carolina" or the letters "N.C.," and the appropriate calendar year. In lieu of other registration fees, the annual license registration fee for such vehicle shall be six dollars (\$6.00). All other provisions of this chapter not inconsistent herewith shall be applicable to such motor vehicles.

The Commissioner of Motor Vehicles is hereby authorized to make such rules as, in his discretion, may seem necessary with respect to applications for special plates, time for making applications and other matters necessary for the efficient administration of this section. (1955, c. 1339; 1969, c. 600, s. 2.)

Editor's Note.—The 1969 amendment, "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof." effective Jan. 1, 1970, increased the annual license registration fee from \$5.00 to \$6.00.

Session Laws 1969, c. 600, s. 23 provides:

§ 20-81.3. Special personalized registration plates.—(a) The Commissioner may issue under such regulation as he shall deem appropriate a special personalized registration plate to the owner of a private passenger motor vehicle in lieu of another number plate. Such personalized registration plate shall be of such design and shall bear such letter or letters and numerals as the Commissioner shall prescribe, but there shall be no duplication of a registration plate. The Commissioner shall in his discretion refuse the issue of such letter combinations which might carry connotations offensive to good taste and decency.

(b) An owner who desires personalized registration plates shall make application for such plates on forms which shall be provided by the Department of Motor Vehicles and pay the sum of ten dollars (\$10.00) annually, which shall be in addition to the regular motor vehicle registration fee. Once an owner has obtained personalized plates, he, where possible, will have first priority on those plates for the following years provided he makes timely and appropriate application; provided, however, that the Commissioner shall not issue a personalized license plate pursuant to this section except upon written application therefor on a form furnished by the Commissioner in which the applicant certifies that his operator's or chauffeur's license has not been revoked or suspended under article 2 of chapter 20 of the General Statutes within two years prior to the date of the application; and provided, further, that any personalized license plate issued pursuant to this section shall be cancelled and recalled by the Commissioner and the application fee forfeited in the event that the Commissioner determines that a false application has been submitted.

(c) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Personalized Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred as follows:

- (1) One half to the account of the Department of Conservation and Development to aid in financing out-of-state advertising under the North Carolina program for the promotion of travel and industrial development in North Carolina.
- (2) One half to the State Highway Commission to be used solely for the purpose of beautification of highways other than those designated as interstate. Such funds shall be administered by the State Highway Commission for beautification purposes not inconsistent with good landscaping and engineering principles.

(d) The Governor's Advisory Committee on Beautification shall act in an advisory capacity to the State Highway Commission and shall, from time to time,

make such recommendations to the State Highway Commission concerning beautification of highways as it shall deem appropriate.

(e) Special personalized registration plate shall mean any registration plate bearing any combination of letters or numerals, or both, other than that which the Department determines would normally be issued sequentially to an applicant for original or renewal vehicle registration.

(f) In the event a personalized registration plate is lost, stolen or mutilated, the owner may not obtain another such plate bearing the same letter, letters or numerals until the next registration year. He may, upon proper application and payment of a fee of one dollar (\$1.00), obtain a plate of the regular series. Provided, further, that a special personalized registration plate revoked for violation of the motor vehicle laws shall not be reissued, but in lieu thereof a plate of the regular series will be issued upon payment of the appropriate fee for the new registration plate. (1967, c. 413.)

§ 20-81.4. Free registration plates to disabled veterans.—(a) From and after January 1, 1970, the North Carolina Department of Motor Vehicles shall provide and issue free of charge to each disabled veteran in this State registration and registration plates for either one (1) automobile or one (1) pickup truck, where a pickup truck is the disabled veteran's only mode of transportation and is not used for hire, a disabled veteran being, for the purpose of this section, a veteran of World War I, World War II or Korean service or Vietnam service, having served in the military, naval, marines or air services of the United States, who is a resident of North Carolina and who is entitled to compensation under the laws administered by the Veterans Administration and who is rated as 100% service-connected disabled or has suffered one or more of the following due to disability incurred in or aggravated by active military, naval, marine or air service of the United States during one or more conflicts:

- (1) Loss or permanent loss of use of one (1) or both feet;
- (2) Loss or permanent loss of use of one (1) or both hands;
- (3) Permanent impairment of vision of both eyes of the following status:

Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than twenty (20) degrees in the better eye.

(b) The registration plates provided for by this section shall be in colors as prescribed by the Department of Motor Vehicles.

(c) The registration plate provided for by this section shall be issued to disabled veterans only upon proof of disabled status, proof of financial responsibility as required by the motor vehicle laws of North Carolina and if the vehicle is to be operated by such disabled veteran that the vehicle is properly equipped to compensate for his disability in the operation thereof and that he has submitted to and passed the driver's license examination required by the motor vehicle laws of North Carolina.

(d) The registration plate provided for by this section once issued shall be subject to all laws and policies that govern and control registration plates in North Carolina and such plate shall be cancelled for violation of same. (1969, c. 461.)

Editor's Note. — Session Laws 1969, c. 461, adding this section, is effective Jan. 1, 1970.

Part 6. Vehicles of Nonresidents of State, etc.

§ 20-83. Registration by nonresidents.

(b) Motor vehicles duly registered in a state or territory which are not allowed exemptions by the Commissioner, as provided for in the preceding paragraph, de-

siring to make occasional trips into or through the State of North Carolina, or operate in this State for a period not exceeding thirty days, may be permitted the same use and privileges of the highways of this State as provided for similar vehicles regularly licensed in this State, by procuring from the Commissioner trip licenses upon forms and under rules and regulations to be adopted by the Commissioner, good for use for a period of thirty days upon the payment of a fee in compensation for said privilege equivalent to one tenth of the annual fee which would be chargeable against said vehicle if regularly licensed in this State: Provided that only one such permit allowed by this section shall be issued for the use of the same vehicle within the same registration year. Provided, however, that nothing in this provision shall prevent the extension of the privileges of the use of the roads of this State to vehicles of other states under the reciprocity provisions provided by law: Provided further, that nothing herein contained shall prevent the owners of vehicles from other states from licensing such vehicles in the State of North Carolina under the same terms and the same fees as like vehicles are licensed by owners resident in this State.

(1967, c. 1090.)

Editor's Note.—

The 1967 amendment inserted the first proviso in subsection (b). As subsections (a) and (c) were not affected by the amendment, they are not set out.

§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by local chapters of American National Red Cross.—The Department upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, shall collect one dollar for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose.

In lieu of the annual one dollar (\$1.00) registration provided for in this section, the Department may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Department shall collect a fee of one dollar (\$1.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Department of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of one dollar (\$1.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and dis-

covery of tuberculosis. The initial one dollar (\$1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates should be valid only on the vehicle for which issued and then only so long as the vehicle shall be operated for the purposes above described and for which the plates were originally issued.

The Department of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of one dollar (\$1.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of, the American National Red Cross. Such registration plate shall be valid only for the vehicle for which issued and then only so long as the vehicle shall be operated as above described. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Department of Motor Vehicles.

In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of one dollar (\$1.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Department vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Department vehicle assigned to him pursuant to G.S. 20-190 and assign a registration plate to each Department service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy thereof shall be furnished to the registration division of the Department. Information as to the individual assignments of such registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that such reassignment shall be made to appear upon the index required herein within twenty (20) days after such reassignment. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382; 1967, c. 284; 1969, c. 800.)

Editor's Note. — The 1967 amendment, effective Jan. 1, 1970, added the last paragraph.

effective Dec. 31, 1967, added the next-to-

Part 7. Title and Registration Fees.

§ 20-87. Passenger vehicle registration fees.—There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

- (1) **Common Carriers of Passengers.**—Common carriers of passengers shall pay an annual license tax of fifty-six cents (56¢) per hundred pounds weight of each vehicle unit, and in addition thereto one and nine-tenths percent (1 9/10%) of the gross revenue derived from such operation: Provided, said additional one and nine-tenths percent (1 9/10%) shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of fifty-six cents (56¢) per hundred pounds: Provided further, that common carriers of passengers operating from a point or points in this State to another point or other points in this State shall be liable for a tax of one and nine-tenths percent

(1 9/10%) on the gross revenue earned in such intrastate hauls. Common carriers of passengers operating between a point or points within this State and a point or points without this State shall be liable for a one and nine-tenths percent (1 9/10%) tax only on that proportion of the gross revenue earned between terminals in this State and terminals outside this State that the mileage in North Carolina bears to the total mileage between the respective terminals. Common carriers of passengers operating through this State from a point or points outside this State to a point or points outside this State shall be liable for a one and nine-tenths percent (1 9/10%) tax on that proportion of the gross revenue earned between such terminals as the mileage in North Carolina bears to the total mileage between the respective terminals. In no event shall the tax paid by such common carriers of passengers be less than fifty-six cents (56¢) per hundred pounds weight for each vehicle. The tax prescribed in this subdivision is levied as compensation for the use of the highways of this State and for the special privileges extended such common carriers of passengers by this State.

(2) U-Drive-It Passenger Vehicles.—U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	\$15.00
	2-passenger capacity	19.00
	3-passenger capacity	23.00

Automobiles: \$38.00 per year for each vehicle of nine-passenger capacity or less, and vehicles of over nine-passenger capacity shall be classified as busses and shall pay \$2.40 per hundred pounds empty weight of each vehicle.

(3) Contract Carrier and Exempt for Hire Passenger Carrier Vehicles.—For hire passenger vehicles shall be taxed at the rate of \$75.00 per year for each vehicle of nine-passenger capacity or less and vehicles of over nine-passenger capacity shall be classified as busses and shall be taxed at a rate of \$2.40 per hundred pounds of empty weight per year for each vehicle; provided, however, no license shall issue for the operation of any taxicab until the governing body of the city or town in which such taxicab is principally operated, if the principal operation is in a city or town, has issued a certificate showing

- That the operator of such taxicab has provided liability insurance or other form of indemnity for injury to persons or damage to property resulting from the operation of such taxicab, in such amount as required by the city or town, and
- That the convenience and necessity of the public requires the operation of such taxicab.

All persons operating taxicabs on January first, one thousand nine hundred and forty-five shall be entitled to a certificate of necessity and convenience for the number of taxicabs operated by them on such date, unless since said date the license of such person or persons to operate a taxicab or taxicabs has been revoked or their right to operate has been withdrawn or revoked; provided that all persons operating taxicabs in Edgecombe, Lee, Nash and Union counties on January first, one thousand nine hundred and forty-five shall be entitled to certificates of necessity and convenience only with the approval of the governing authority of the town or city involved.

A taxicab shall be defined as any motor vehicle, seating nine or fewer passengers, operated upon any street or highway on call or demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the

passenger or passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in §§ 62-121.5 through 62-121.79. Such taxicab shall not be construed to be a common carrier nor its operator a public service corporation.

- (4) Repealed by Session Laws 1967, c. 1136.
- (5) Private Passenger Vehicles.—There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than nine passengers	\$13.00
Private passenger vehicles over nine passengers	\$16.00

 provided, that a fee of only \$1.00 shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.
- (6) Private Motorcycles.—The tax on private passenger motorcycles shall be six dollars (\$6.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the tax shall be thirteen dollars (\$13.00).
- (7) Manufacturers and Motor Vehicle Dealers.—Manufacturers and dealers in motor vehicles, trailers and semitrailers for license and for one set of dealer's plates shall pay the sum of thirty-five dollars (\$35.00), and for each additional set of dealer's plates the sum of one dollar (\$1.00).
- (8) Driveaway Companies.—Any person, firm or corporation engaged in the business of driving new motor vehicles from the place of manufacture to the place of sale in this State for compensation shall pay as a registration fee and for one set of plates one hundred twenty-five dollars (\$125.00) and for each additional set of plates six dollars (\$6.00).
- (9) House Trailers.—In lieu of other registration and license fees levied on house trailers under this section or § 20-88 of the General Statutes, the registration and license fee on house trailers shall be four dollars (\$4.00) for the license year or any portion thereof.
- (10) Special Mobile Equipment.—The tax for special mobile equipment shall be four dollars (\$4.00) for the license year or any portion thereof; provided, that vehicles on which are permanently mounted feed mixers, grinders and mills and on which are also transported molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process shall be taxed an additional sum of thirty dollars (\$30.00) for the license year or any portion thereof, in addition to the basic four dollars (\$4.00) tax provided for herein.

(1937, c. 407, s. 51; 1939, c. 275; 1943, c. 648; 1945, c. 564, s. 1; c. 576, s. 2; 1947, c. 220, s. 3; c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; c. 826, s. 4; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927; 1967, c. 1136; 1969, c. 600, ss. 3-11.)

Editor's Note.—

The 1967 amendment changed the catch-line or caption for subdivision (3) from "For Hire Passenger Vehicles" to "Contract Carrier and Exempt for Hire Passenger Carrier Vehicles" and struck out subdivision (4).

The 1969 amendment, effective Jan. 1, 1970, rewrote subdivisions (1) and (5) and increased the fees in subdivisions (2), (3), (6), (7), (8), (9) and (10).

Session Laws 1969, c. 600, s. 23 provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

The subject matter of former §§ 62-121.5 through 62-121.79, referred to in subdivision (3) of this section, is now covered by §§ 62-259 through 62-279.

§ 20-88. Property hauling vehicles.

(b) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of self-propelled property-carrying vehicles, fees according to the following classification and schedule and upon the following conditions:

SCHEDULE OF WEIGHTS AND RATES

Rates Per Hundred Pound Gross Weight

	<i>Farmer</i>
Not over 4,500 pounds	\$0.20
4,501 to 8,500 pounds inclusive .....	.25
8,501 to 12,500 pounds inclusive .....	.32
12,501 to 16,500 pounds inclusive .....	.44
Over 16,500 pounds .....	.50

	<i>Private Hauler</i>
Not over 4,500 pounds	\$0.40
4,501 to 8,500 pounds inclusive .....	.50
8,501 to 12,500 pounds inclusive .....	.63
12,501 to 16,500 pounds inclusive .....	.88
Over 16,500 pounds	1.00

	<i>Contract Carriers, Flat Rate Common Carriers and Exempt for Hire Carriers</i>
Not over 4,500 pounds	\$0.95
4,501 to 8,500 pounds inclusive .....	.95
8,501 to 12,500 pounds inclusive	1.25
12,501 to 16,500 pounds inclusive	1.45
Over 16,500	1.75

	<i>Common Carrier of Property (Deposit)</i>
Not over 4,500	\$0.75
4,501 to 8,500 pounds inclusive .....	.75
8,501 to 12,500 pounds inclusive .....	.75
12,501 to 16,500 pounds inclusive .....	.75
Over 16,500 pounds .....	.75

- (1) The minimum fee for a vehicle licensed under this subsection shall be twelve dollars and fifty cents (\$12.50) at the farmer rate and sixteen dollars (\$16.00) at the private hauler, contract carrier and common carrier rates.
- (2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than ten acres in area, and who does not engage in the business of buying products for resale.
- (3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
- (4) Farm products means any food crop, cattle, hogs, poultry, dairy products, flower bulbs (but does not mean nursery products) and other agricultural products designed to be used for food purposes, including

in the term farm products also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products.

(5) The Department shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.

(6) There shall be paid to the Department annually as of the first of January, the following fees for "wreckers" as defined under § 20-38 (39): A wrecker fully equipped weighing seven thousand pounds or less, sixty-two dollars and fifty cents (\$62.50); wreckers weighing in excess of seven thousand pounds shall pay one hundred twenty-five dollars (\$125.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of trailers or semitrailers, four dollars (\$4.00) for any part of the license year for which said license is issued.

(e) Common Carriers of Property.—Common carriers of property shall pay an annual license tax as per the above schedule of rates for each vehicle unit, and in addition thereto seven and one-half percent of the gross revenue derived from such operations: Provided, said additional seven and one-half percent shall not be collectible unless and until and only to the extent that such amount exceeds the license tax or deposit per the above schedule: Provided, further, common carriers of property operating from a point or points in this State to another point or points in this State shall be liable for a tax of seven and one-half percent on the gross revenue earned in such intrastate hauls. Common carriers of property operating between a point or points within this State and a point or points without this State shall be liable for a seven and one-half percent tax only on that proportion of the gross revenue earned between terminals in this State and terminals outside this State that the mileage in North Carolina bears to the total mileage between the respective terminals. Common carriers of property operating through this State from a point or points outside this State to a point or points outside this State shall be liable for a seven and one-half percent tax on that proportion of the gross revenue earned between such terminals as the mileage in North Carolina bears to the total mileage between the respective terminals. In no event shall the tax paid by such common carriers of property be less than the license tax or deposit shown on the above schedule, except where a franchise is hereafter issued by the Utilities Commission for service over a route within the State which is not now served by any common carrier of property the seven and one-half percent gross revenue tax may be reduced to five percent for the first two years only. The tax prescribed in this subsection is levied as compensation for the use of the highways of this State and for the special privileges extended such common carriers of property by this State. Common carriers of property operating from a point in this State to a point in another state over two or more routes, shall compute their mileage from the point of origin to the point of destination on the basis of the average mileage of all routes used by them from the point in this State to the point outside of this State and this figure shall be used as the mileage between said points in determining the percentage of miles operated in North Carolina between said points.

In lieu of the seven and one-half percent gross revenue tax levied by this subsection and the deposit required by subsection (b) of this section, common carriers of property may elect to pay a flat rate according to the highest rate provided by subsection (b) of this section for vehicles and loads of the same gross weight operated by contract carriers. The election to so pay must be made at the time license plates are applied for and may not thereafter be changed during the license year except that for the license year 1949 such election, if one is made, must be made on or before July 1, 1949. Vehicles registered and licensed during the license year and after the election herein provided for has been made, must be

registered and licensed and the operator shall pay taxes on the operation thereof according to the election made. A failure by a common carrier of property to make an election under this paragraph shall render such common carrier of property liable for the deposit required by subsection (b) of this section and the seven and one-half percent gross revenue tax levied by this subsection.

(g) Repealed by Session Laws 1969, c. 600, s. 17, effective January 1, 1970.

(1967, c. 1095, ss. 1, 2; 1969, c. 600, ss. 12-17; c. 1056, s. 1.)

Editor's Note.—

The 1967 amendment, effective Feb. 15, 1968, substituted "Contract Carriers. Flat Rate Common Carriers and Exempt for Hire Carriers" for "Contract Carrier" in subsection (b) and rewrote a portion of former subsection (g).

The first 1969 amendment, effective Jan. 1, 1970, rewrote the schedule of weights and rates in subsection (b), increased the fees in subdivisions (1) and (6) of subsection (b) and in subsection (c), substituted "seven and one-half percent" for "six percent" throughout subsection (e) and "five percent" for "four percent" in the fourth

sentence of subsection (e) and repealed subsection (g).

Session Laws 1969, c. 600, s. 23 provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

The second 1969 amendment inserted the heading "Rates Per Hundred Pound Gross Weight" at the beginning of the rate schedule and substituted "Contract Carriers" for "Common Carriers" in the rate schedule in subsection (b).

As the other subsections were not changed by the amendments, they are not set out.

§ 20-89. Method of computing gross revenue of common carriers of passengers and property.—In computing the gross revenue of common carriers of passengers and common carriers of property, revenue derived from the transportation of United States mail or other United States government services shall not be included. All revenue earned both within and without this State from the transportation of persons or property, except as herein provided, by common carriers of passengers and common carriers of property, whether on fixed schedule routes or by special trips or by auxiliary vehicles not licensed as common carriers of property, whether owned by the common carrier of property or hired from another for the transportation of persons or property within the limits of the designated franchise route shall be included in the gross revenue upon which said tax is based. Provided, however, that whenever any person licensed as a common carrier of property transports his own property, other than for his own use, he shall be liable for a tax on such transportation, computed at seven and one-half percent ($7\frac{1}{2}\%$) of the gross charges authorized by the Utilities Commission or Interstate Commerce Commission on such operation if it had been for hire; and common carriers of property shall maintain accurate records of all operations involving transportation of their own property, in order that said tax may be correctly computed, paid and audited.

When vehicles are leased from other operators who are licensed in this State as contract carriers, for hire passenger or common carriers of property any amounts paid to such operators under said lease may be deducted by the lessees from gross revenue on which tax is based in the event a copy of the lease and adequate records and receipts are maintained so as to clearly reflect such payments. Any revenue earned by a common carrier of property under a lease or rental shall be included in the gross revenue upon which said tax is based but revenue earned by a common carrier of passengers from coach rentals shall not be included in gross revenue on which tax is based. (1937, c. 407, s. 53; 1943, c. 726; 1945, c. 414, s. 2; c. 575, s. 2; 1951, c. 819, ss. 1, $2\frac{1}{2}$; 1969, c. 600, s. 18.)

Editor's Note.—The 1969 amendment, effective Jan. 1, 1970, substituted "seven and one-half percent ($7\frac{1}{2}\%$)" for "six percent (6%)" in the third sentence of the first paragraph.

Session Laws 1969, c. 600, s. 23 provides: "This act shall not affect the liability of any taxpayer arising prior to the effective date of the applicable section hereof."

§ 20-90. Due date of franchise tax.—The additional tax on common carriers of passengers and common carriers of property shall become due and payable on or before the thirtieth day of the month following the month in which it accrues.

Whenever a contract carrier or a flat rate common carrier of property becomes a regular common carrier of property subject to the seven and one-half percent ($7\frac{1}{2}\%$) gross revenue tax under this chapter during the license renewal period, January 1 to February 15, said carrier's gross revenue for the seven and one-half percent ($7\frac{1}{2}\%$) tax purpose shall be all the revenue earned from operations on and after the January 1 preceding the carrier's change to a regular common carrier during the renewal period January 1 to February 15.

Whenever a regular common carrier of property subject to the seven and one-half percent ($7\frac{1}{2}\%$) gross revenue tax under this chapter becomes a flat rate common carrier of property or a contract carrier during the license renewal period, January 1 to February 15, said carrier's gross revenue for the seven and one-half percent ($7\frac{1}{2}\%$) tax purposes shall be all the revenue earned from operations up to and including operations on the December 31 preceding the carrier's change to a flat rate common carrier of property or a contract carrier if such change is made during the renewal period January 1 to February 15. (1937, c. 407, s. 54; 1951, c. 729; c. 819, s. 1; 1955, c. 1313, s. 2; 1967, c. 1079, s. 1; 1969, c. 600, s. 19.)

Editor's Note. — The 1967 amendment rewrote the second and third paragraphs.

The 1969 amendment substituted "seven and one-half percent ($7\frac{1}{2}\%$)" for "six percent (6%)" throughout the section.

Session Laws 1969, c. 600, s. 23 provides: "This act shall not affect the liability of any

taxpayer arising prior to the effective date of the applicable section hereof."

Session Laws 1969, c. 1056, s. 2, amended Session Laws 1969, c. 600, s. 25, so as to change the effective date of the 1969 amendment to this section from July 1, 1969 to Jan. 1, 1970.

§ 20-91. Records and reports required of franchise carriers.

(b) All common carriers of passengers and common carriers of property shall, on or before the thirtieth day of each month, make a report to the Department of gross revenue earned and gross mileage operated during the month previous, in such manner as the Department may require and on such forms as the Department shall furnish. If reports are not filed by the thirtieth day of the month following the month for which the report is made, a penalty of five percent (5%) of gross receipts tax reported will be due. This five percent (5%) penalty must be paid in addition to the gross receipts tax and may not be claimed as a credit against the tag deposit. Provided that the Commissioner may, in his discretion, waive the five percent (5%) penalty upon proof by the carrier that late filing of report was due to extenuating circumstances beyond the control of the carrier.

(1967, c. 1079, s. 2.)

Editor's Note. — The 1967 amendment added the second, third and fourth sentences in subsection (b).

As the other subsections were not affected by the amendment, they are not set out.

§ 20-94. Partial payments.—In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars (\$400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June first in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon forms to be provided by the Commissioner in an amount equivalent to one half of such tax, plus a carrying charge of one half of one percent ($\frac{1}{2}$ of 1%): Provided, that any person using any tag so purchased after the first day of June in any such year without having first provided for the payment of such draft, shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such

draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in § 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Department until the draft has been paid. Any one owner whose gross license amounts to more than two hundred dollars (\$200.00) but not more than four hundred dollars (\$400.00) may also be permitted to sign a draft in accordance with the foregoing provisions of this section provided such owner makes application for the draft on or before February 1st during the license renewal period. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49, ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192; 1967, c. 712.)

Editor's Note.—The 1967 amendment added the last sentence.

§ 20-101. For hire vehicles to be marked.—All motor vehicles licensed as common carriers or contract carriers of passengers or property and all exempt for hire motor carriers shall have printed on each side of the vehicle in letters not less than three inches in height the name and home address of the owner, the certificate number, permit number, or exemption number under which said vehicle is operated, and such other identification as may be required and approved by the Utilities Commission. (1937, c. 407, s. 65; 1951, c. 819, s. 1; 1967, c. 1132.)

Editor's Note.—The 1967 amendment, effective Nov. 15, 1967, rewrote the section.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-105. Unlawful taking of a vehicle.

Inference Arising from Unlawful Possession of Vehicle.—It is more accurate to refer to the unlawful and unexplained possession of an automobile, recently and unlawfully taken from the actual or constructive possession of the owner thereof, as giving rise to an inference, an evidential circumstance, that the person having such possession thereof had unlawfully taken it into his possession with intent to deprive the owner of the (temporary) use thereof. State v. Frazier, 268 N.C. 249, 150 S.E.2d 431 (1966).

The presumption arising from the recent possession of stolen property is to be considered by the jury merely as an evidential fact, along with the other evidence in the case, in determining whether the State has carried the burden of satisfying the jury beyond a reasonable doubt of the defendant's guilt. State v. Hayes, 273 N.C. 712, 161 S.E.2d 185 (1968).

Offense Not an Included Less Degree of Larceny.—The statutory criminal offense defined in this section, sometimes referred to as "temporary larceny," is not an included less degree of the crime of larceny; and a defendant may not be convicted of

a violation of this section when tried upon a bill of indictment charging the crime of larceny. State v. Wall, 271 N.C. 675, 157 S.E.2d 363 (1967).

Possession of One Participant Is the Possession of All.—Possession may be personal and exclusive, although it is the joint possession of two or more persons, if they are shown to have acted in concert, or to have been participants criminis, the possession of one participant being the possession of all. State v. Frazier, 268 N.C. 249, 150 S.E.2d 431 (1966).

Immediate flight of both defendants, without explanation, at mere approach of officers may be considered more than slight corroborative evidence of relation between their then unlawful possession and the unlawful removal of automobile from parking lot. State v. Frazier, 268 N.C. 249, 150 S.E.2d 431 (1966).

Jurisdiction of Superior Court of Guilford County.—See State v. Covington, 267 N.C. 292, 148 S.E.2d 138 (1966).

Punishment Prior to 1965 Amendment.—For punishment under this section prior to 1965 amendment, see State v. Massey, 265 N.C. 579, 144 S.E.2d 649 (1965).

§ 20-106. Receiving or transferring stolen vehicles.

Cross Reference.— article declared to constitute a felony, see As to penalty for a violation of this § 20-177.

§ 20-109. Altering or changing engine or other numbers.—No person shall wilfully deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle and neither shall any owner permit the defacing, destroying or alteration of such numbers or marks. No person shall place or stamp any serial, engine or other number or marking upon a vehicle, except one assigned thereto by the Department, and neither shall any owner permit the placing or stamping of any number or mark upon a motor vehicle except one assigned thereto by the Department. It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this section, and upon conviction said person shall be punished by a fine or imprisonment not to exceed two years, or both, in the discretion of the court. (1937, 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3; 1967, c. 449.)

Editor's Note.—

The 1967 amendment inserted "not to

exceed two years" near the end of the last sentence.

§ 20-111. Violation of registration provisions.

The maximum punishment for a violation of this section or § 20-63 would be that prescribed by § 20-176 (b), namely, a fine of not more than one hundred dollars or imprisonment in the county or municipal jail for not more than sixty days, or both

such fine and imprisonment. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

Applied in *State v. Green*, 266 N.C. 785, 147 S.E.2d 377 (1966).

Cited in *State v. White*, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

§ 20-114. Duty of officer; manner of enforcement.

(c) It shall also be the duty of every sheriff of every county of the State and of every police or peace officer of the State to make immediate report to the Commissioner of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of intoxicating liquors or other unlawful purposes, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least twenty days before the date of such sale. (1937, c. 407, s. 78; 1943, c. 726; 1967, c. 862.)

Editor's Note.—The 1967 amendment, effective July 1, 1967, inserted "on a form approved by the Commissioner" near the end of subsection (c).

As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 20-114.1. Willful failure to obey traffic officer; firemen as traffic officers.—(a) No person shall willfully fail or refuse to comply with any lawful order or direction of any law-enforcement officer invested by law with authority to direct, control or regulate traffic, which order or direction related to the control of traffic.

(b) In addition to other law-enforcement officers, uniformed regular and volunteer firemen may direct traffic and enforce traffic laws and ordinances at the scene of fires in connection with their duties as firemen, and uniformed regular and volunteer members of a rescue squad may direct and enforce traffic laws and ordinances at the scene of accidents in connection with their duties. Except as herein provided, firemen and members of rescue squads shall not be considered law-enforcement officers. (1961, c. 879; 1969, c. 59.)

Editor's Note.—The 1969 amendment rewrote this section, which formerly related only to firemen.

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-116. Size of vehicles and loads.

(d) A vehicle having two (2) axles shall not exceed thirty-five (35) feet in length of extreme over-all dimensions inclusive of front and rear bumpers. A vehicle having three (3) axles shall not exceed forty (40) feet in length over-all dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(j) Self-propelled grain combines or other farm equipment self-propelled or otherwise, not exceeding fifteen and one-half feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways, and provided, that such combines or equipment may be operated on numbered federal or State highways exclusive of the Interstate System, only by special permit as provided in G.S. 20-119; permits issued in compliance with G.S. 20-119 for equipment covered under this section may be on an annual basis and shall expire on January 1 of the year next following the year of issuance: Provided, further, that all such combines or equipment which exceed ten feet in width may be so operated only under the following conditions:

- (1) Said equipment may only be so operated during daylight hours; and
- (2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible for not less than 300 feet; and said equipment shall travel only on routes designated by the special permit required under this section and for distances not to exceed ten miles; and
- (3) Equipment covered by this section requiring special permit to be operated on permissible or designated highways, which by necessity must travel more than ten miles, must be preceded at a distance of 300 feet and followed at a distance of 300 feet by a flagman either on foot or in a vehicle. Each flagman must carry and display, by hand or mounted on his vehicle, a red flag, not smaller than three feet wide and four feet long. Said flag shall be attached to a stick, pole, staff, etc., not less than three feet long and every such piece of equipment so operated shall carry and display at least one red flag not less than three feet wide and four feet long. Equipment to be operated for a distance in excess of ten miles may not be so operated on Sundays, or holidays; and
- (4) Every such piece of equipment so operated shall operate to the right of the center line when possible and practical.

(k) Nothing in this section shall be construed to prevent the operation of passenger buses having an overall width of 102 inches, exclusive of safety equipment, upon the highways of this State which are 20 feet or wider and that are designated as the State primary system, or as municipal streets, when, and not until, the federal law and regulations thereunder permit the operation of passenger buses having a width of 102 inches or wider on the National System of Interstate and Defense Highways. (1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471; 1967, c. 24, s. 4; c. 710; 1969, cc. 128, 880.)

Editor's Note.—

Chapter 24, Session Laws 1967, originally effective Oct. 1, 1967, substituted

"preceded" for "proceeded" in the first sentence of subdivision (3) of subsection (j). Session Laws 1967, c. 1078, amends

c. 24 so as to make it effective July 1, 1967.

Chapter 710, Session Laws 1967, effective Jan. 1, 1968, substituted, in the opening paragraph of subsection (j), "an annual basis and shall expire on January 1 of the year next following the year of issuance" for "a seasonal basis," substituted "ten" for "four" near the end of subdivision (2) and in the first and last sentences of subdivision (3) of subsection (j), and deleted "Saturdays" preceding "Sundays" near the end of subdivision (3) of subsection (j).

The first 1969 amendment rewrote subsection (d).

§ 20-117. Flag or light at end of load.

Purpose of Section.—The obvious purpose of this section is to promote the safety of one following a loaded vehicle upon the highway. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

And Meaning.—The clear meaning of this section is that during daylight hours a red flag shall be displayed from the end of the projecting load so that there shall be visible to a user of the highway following the vehicle at least twelve inches of the flag's length and twelve inches of the flag's width. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Draping Flag Over Load.—The requirement of this section is not met by draping over the top of the load a red flag of

The second 1969 amendment, effective Sept. 1, 1969, added subsection (k).

As the rest of the section was not changed by the amendments, only subsections (d), (j) and (k) are set out.

Transporting Pole in Daytime without Special Permit Is Not Negligence Per Se.

—Vehicles transporting poles in the daytime are exempt from the requirements of subsection (e) of this section, and therefore during the daytime it is not negligence per se to transport without a special permit a 40-foot pole on a trailer. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

§ 20-118. Weight of vehicles and load.

the required dimensions so that only a fringe of it is visible to one following the vehicle upon the highway. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

Violation of Section, etc.—

Violation of this section by failure to display at night a light, such as is required thereby, is negligence. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

The violation of this section during the daylight hours, by failure to comply with its requirements applicable to such time, is negligence. Ratliff v. Duke Power Co., 268 N.C. 605, 151 S.E.2d 641 (1966).

§ 20-118. Weight of vehicles and load.

(5) For each violation of subdivisions (3) or (4), or for each violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall pay to the Department a penalty for each pound of weight of [on] such axle in excess of the said maximum weight in accordance with the following schedule: For the first one thousand (1,000) pounds or any part thereof, two cents (2¢) per pound; for the next one thousand (1,000) pounds or any part thereof, three cents (3¢) per pound; and for each additional pound, five cents (5¢) per pound. Provided, however, the penalty shall not apply if the excess weight on any one axle does not exceed one thousand (1,000) pounds. Said one thousand (1,000) pounds shall constitute a tolerance and no additional tolerance on axle weight shall be granted administratively or otherwise. In all cases of violation of the axle weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in subdivisions (3) and (4) including the one thousand (1,000) pound tolerance. The penalties herein provided shall constitute sole punishment for violation of this subdivision and violators thereof shall not be subject to criminal action. Provided, that when it is discovered that a vehicle is in violation of subdivisions (3) or (4), or is in violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall be permitted to shift without penalty the weight from one axle to another to comply with the axle

limits set forth in this section in the following instances, provided, that the gross weight of the vehicle is within the legal limit:

- a. In cases where the single axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
- b. In cases where the vehicle has tandem axles and the weight exceeds the statutory limits, but does not exceed 40,000 pounds, for any two axle combination or 60,000 pounds for any three axle combination.
- c. In cases where the axle weight does not exceed 15,500 pounds and the limit placed on the road or highway by the State Highway Commission is 13,000 pounds per axle.

(6) **Axle Weights.**—For the purposes of this section, the following definitions shall apply:

- a. **Single axle weight.**—The total load on all wheels whose centers are included within two parallel transverse planes less than forty-eight inches apart.
- b. **Tandem axle weight.**—The total load on all wheels whose centers are at least forty-eight inches apart but not more than one-hundred-four inches apart and are equipped with a connecting mechanism designed to equalize the load on all axles except that as to any vehicle equipped with tandem axles prior to July 1, 1969, the portion of this definition concerning a connecting mechanism designed to equalize the load on all axles shall not apply.

(1969, c. 537.)

Editor's Note.—

The 1969 amendment, effective July 1, 1969, substituted in paragraph b of subdivision (5) "for any two axle combination or 60,000 pounds for any three axle combination" for "provided, that for the purpose of this section tandem axles shall be

defined as any two axles more than 48 inches apart but less than 96 inches apart." The amendment also rewrote subdivision (6).

As the rest of the section was not changed by the amendment, only subdivisions (5) and (6) are set out.

§ 20-119. Special permits for vehicles of excessive size or weight.

Violation as Negligence Per Se.—The failure to obtain a permit to operate oversize or overweight vehicles in violation of this section is negligence per se. *Byers v. Standard Concrete Prods. Co.*, 268 N.C. 518, 151 S.E.2d 38 (1966).

Transporting Pole in Daytime without Special Permit Is Not Negligence Per Se.

—Vehicles transporting poles in the daytime are exempt from the requirements of § 20-116 (e), and therefore during the daytime it is not negligence per se to transport without a special permit a 40-foot pole on a trailer. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

§ 20-122.1. Motor vehicles to be equipped with safe tires.—(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth: Provided, the two thirty-seconds (2/32) tread depth requirements of this section shall not apply to dual wheel trailers. Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels. For the purpose of this section, the following definitions shall apply:

- (1) "Chunking"—separation of the tread from the carcass in particles which may range from very small size to several square inches in area.

- (2) "Cord"—strands forming a ply in a tire.
- (3) "Tread"—portion of tire which comes in contact with road.
- (4) "Tread depth"—the distance, measured near the center line of the tire, from the base of the tread design to the top of the tread.

(b) The driver of any vehicle who is charged with a violation of this section shall be allowed 15 calendar days within which to bring the tires of such vehicle in conformance with the requirements of this section. It shall be a defense to any such charge that the person arrested produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an official safety inspection equipment station showing that within 15 calendar days after such arrest, the tires on such vehicle had been made to conform with the requirements of this section or that such vehicle had been sold, destroyed, or permanently removed from the highways. Violation of this section shall not constitute negligence per se. (1969, c. 378, s. 1; c. 1256.)

Editor's Note. — The 1969 amendment added the proviso to the second sentence and inserted the third sentence of subsection (a).

§ 20-123. Trailers and towed vehicles.

One using a vehicle trailer on the public highways is required to exercise reasonable care, both as to the equipment of the trailer and as to the operation of the vehicle to which it is attached. *Miller v. Lucas*, 267 N.C. 1, 147 S.E.2d 537 (1966).

In the case of a trailer not controlled in its movements by any person thereon, the operator of the vehicle to which the trailer is attached must exercise reasonable care to see that it is properly attached and that the progress of the two vehicles does not cause danger or injury. *Miller v. Lucas*, 267 N.C. 1, 147 S.E.2d 537 (1966).

And Violation of Section Is Negligence Per Se.—A violation of this section intended and designed to prevent injury to persons or property on the highways is negligence per se. *Miller v. Lucas*, 267 N.C. 1, 147 S.E.2d 537 (1966).

§ 20-124. Brakes.

(c) Every motor vehicle when operated on a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, and shall have all originally equipped brakes in good working order, including two separate means of applying the brakes. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes.

(f) Every semitrailer, or trailer, or separate vehicle, attached by a drawbar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of one thousand pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in subsection (e) of this section and shall be of a type approved by the Commissioner.

(h) From and after July 1, 1955, no person shall sell or offer for sale for use in motor vehicle brake systems in this State any hydraulic brake fluid of a type and brand other than those approved by the Commissioner of Motor Vehicles. From and after January 1, 1970 no person shall sell or offer for sale in motor vehicle brake systems any brake lining of a type or brand other than those approved by the Commissioner of Motor Vehicles. Violation of the provisions of this sub-

section shall constitute a misdemeanor. (1937, c. 407, s. 87; 1953, c. 1316, s. 2; 1955, c. 1275; 1959, c. 990; 1965, c. 1031; 1967, c. 1188; 1969, cc. 787, 866.)

Editor's Note.—

The 1967 amendment rewrote the first sentence in subsection (c) and eliminated "on at least two wheels" at the end of the second sentence therein.

The first 1969 amendment, effective Jan. 1, 1970, inserted the second sentence in subsection (h).

The second 1969 amendment substituted "subsection (e)" for "subsection (d)" near the end of subsection (f).

As the other subsections were not affected by the amendments, they are not set out.

Legislative Purpose.—

The purpose of this section is to protect from injury all persons using the highway, both occupants of the vehicle in question and others. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

But Section Must Be Given, etc.—

In accord with original. See *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

The duty imposed by this section rests both upon the owner and upon the driver of the vehicle, though knowledge of a defect, or negligence in failing to discover it, on the part of the one would not necessarily be imputed to the other. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

The legislature did not intend, etc.—

In accord with original. See *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

Violation Negligence Per Se.—

The violation of this section and other safety statutes is negligence per se, unless the statute expressly provides otherwise. *McCall v. Dixie Cartage & Warehousing, Inc.*, 272 N.C. 190, 158 S.E.2d 72 (1967).

Liability of Bailor.— When a prospective purchaser of an automobile is permitted

by the dealer to take the car and drive it for the purpose of trying it out to determine whether he wishes to buy it, no representative of the dealer accompanying him, the relationship between the dealer and the prospective purchaser is that of bailor and bailee. The bailment is one for the mutual benefit of the parties. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

The bailor, even though a dealer in secondhand automobiles and engaged in the repair of automobiles, is not an insurer of the brakes upon a vehicle held by him for sale and delivered by him to a prospective customer for a trial drive upon the highway. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

A bailor who knows, or by a reasonable inspection of his vehicle should know, that its brakes are defective and unsafe, is negligent in permitting that vehicle to be taken from his premises and driven upon the highway by a bailee and may be held liable in damages to a third person injured by the operation of such vehicle, if such defect in its brakes is the proximate cause of such injury. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

The burden is upon the plaintiff to prove that the bailor, at the time he allowed the vehicle to leave his possession for such purpose, knew, or in the exercise of reasonable care in the inspection of the vehicle should have known, that the brakes were defective. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

The doctrine of res ipsa loquitur does not apply to a brake failure several hours and many miles after delivery of the car to the bailee. *Wilcox v. Glover Motors, Inc.*, 269 N.C. 473, 153 S.E.2d 76 (1967).

Cited in *Vann v. Hayes*, 266 N.C. 713, 147 S.E.2d 186 (1966).

§ 20-125.1. Directional signals.—(a) It shall be unlawful for the owner of any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, to register such vehicle or cause it to be registered in this State, or to obtain, or cause to be obtained in this State registration plates therefor, unless such vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable

cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor vehicle is equipped shall be presumed *prima facie* to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State.

(c) Trailers satisfying the following conditions are not required to be equipped with a directional signal device:

- (1) The trailer and load does not obscure the directional signals of the towing vehicle from the view of a driver approaching from the rear and within a distance of two hundred (200) feet;
- (2) The gross weight of the trailer and load does not exceed four thousand (4,000) pounds.

(d) Nothing in this section shall apply to motorcycles. (1953, c. 481; 1957, c. 488, s. 1; 1963, c. 524; 1969, c. 622.)

Editor's Note.— The 1969 amendment substituted "four thousand (4,000)" for "three thousand

(3,000)" in subdivision (2) of subsection (c).

§ 20-126. Mirrors.—(a) No person shall drive a motor vehicle on the streets or highways of this State unless equipped with an inside rear view mirror of a type approved by the Commissioner, which provides the driver with a clear, undistorted, and reasonably unobstructed view of the highway to the rear of such vehicle; provided, a vehicle so constructed or loaded as to make such inside rear view mirror ineffective, may be operated if equipped with a mirror of a type to be approved by the Commissioner located so as to reflect to the driver a view of the highway to the rear of such vehicle. A violation of this subsection shall not constitute negligence *per se* in civil actions. Farm tractors, self-propelled implements of husbandry and construction equipment and all self-propelled vehicles not subject to registration under this chapter are exempt from the provisions of this section. Provided that pickup trucks equipped with an outside rear view mirror approved by the Commissioner shall be exempt from the inside rear view mirror provision of this section.

(c) No person shall operate a motorcycle upon the streets or highways of this State unless such motorcycle is equipped with a rear view mirror so mounted as to provide the operator with a clear, undistorted and unobstructed view of at least 200 feet to the rear of the motorcycle. No motorcycle shall be registered in this State after January 1, 1968 unless such motorcycle is equipped with a rear view mirror as described in this section. Violation of the provisions of this subsection shall not be considered negligence *per se* or contributory negligence *per se* in any civil action. (1937, c. 407, s. 89; 1965, c. 368; 1967, c. 282, s. 1; c. 674, s. 2; c. 1139.)

Editor's Note.—

The first 1967 amendment, effective Jan. 1, 1968, rewrote subsection (a).

The second 1967 amendment, effective Jan. 1, 1968, added subsection (c).

The third 1967 amendment added the last sentence in subsection (a).

As subsection (b) was not changed by the amendments, it is not set out.

The violation of this section and other safety statutes is negligence *per se*, unless the statute expressly provides otherwise. *McCall v. Dixie Cartage & Warehousing, Inc.*, 272 N.C. 190, 158 S.E.2d 72 (1967).

Inside Mirror Installed by Manufacturer. — Section 1.2, c. 282, Session Laws 1967, provides that any inside mirror in-

stalled in any motor vehicle by its manufacturer shall be deemed to comply with subsection (a) of this section.

§ 20-127. Windshields must be unobstructed.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. Provided, on any vehicle equipped by its manufacturer with such devices on both the right and left sides of windshield, both such devices shall be in working order. The device required by this subsection shall be of a type approved by the Commissioner.

(1967, c. 1077.)

Editor's Note. — The 1967 amendment added the proviso in subsection (b). changed by the amendment, they are not set out.

As subsections (a) and (c) were not

§ 20-129. Required lighting equipment of vehicles. —(a) When Vehicles Must Be Equipped.—Every vehicle upon a highway within this State during the period from a half hour after sunset to a half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with lighted head lamps and rear lamps as in this section respectively required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in § 20-134.

(d) Rear Lamps. — Every motor vehicle, and every trailer or semitrailer attached to a motor vehicle and every vehicle which is being drawn at the end of a combination of vehicles, shall have all originally equipped rear lamps or the equivalent in good working order, which lamps shall exhibit a red light plainly visible under normal atmospheric conditions from a distance of 500 feet to the rear of such vehicle. One rear lamp or a separate lamp shall be so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be illuminated by a white light as to be read from a distance of 50 feet to the rear of such vehicle. Every trailer or semitrailer shall carry at the rear, in addition to the originally equipped lamps, a red reflector of the type which has been approved by the Commissioner and which is so located as to height and is so maintained as to be visible for at least 500 feet when opposed by a motor vehicle displaying lawful undimmed lights at night on an unlighted highway.

Notwithstanding the provisions of the first paragraph of this subsection, it shall not be necessary for a trailer, weighing less than 4000 pounds, to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors of a diameter of not less than four inches, such reflectors to be approved by the Commissioner, and which are so designed and located as to height and are maintained so that each reflector is visible for at least 500 feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway.

(1967, cc. 1076, 1213; 1969, c. 389.)

Editor's Note. — The first 1967 amendment rewrote subsection (d).

The second 1967 amendment substituted "head lamps" for "front" in subsection (a).

The 1969 amendment substituted "weighing less than 4000" for "licensed for not more than 2500" near the beginning of the second paragraph of subsection (d).

As the other subsections were not

changed by the amendments, they are not set out.

Purpose of Section. —

In accord with 3rd paragraph in original. See *White v. Mote*, 270 N.C. 544, 155 S.E.2d 75 (1967).

Section Applies to State Highway System Only. — The provisions of this section are not applicable to defendants' truck parked or stopped on a street in the city

when plaintiff has neither allegation nor proof to show that the street forms a part of the State highway system. *Coleman v. Burris*, 265 N.C. 404, 144 S.E.2d 241 (1965).

Violation as Negligence Per Se.—

In accord with 2nd paragraph in original. See *Faison v. T & S Trucking Co.*, 266 N.C. 383, 146 S.E.2d 450 (1966).

In accord with 3rd paragraph in original. See *White v. Mote*, 270 N.C. 544, 155 S.E.2d 75 (1967).

The violation of this section constitutes negligence per se. *McNulty v. Chaney*, 1 N.C. App. 610, 162 S.E.2d 90 (1968).

The function of a front light or headlight, defined by this section and § 20-131.

§ 20-129.1. Additional lighting equipment required on certain vehicles.

(4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(5) On every pole trailer having a gross weight of 4,000 pounds or more:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:

On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.

(1969, c. 387.)

Editor's Note. — The 1969 amendment substituted "of 4,000 pounds or more" for "in excess of 3,000 pounds" near the beginning of subdivision (4), substituted "having a gross weight of 4,000 pounds or more" for "in excess of 3,000 pounds gross weight" near the beginning of subdivision (5) and substituted "having a gross weight of less than 4,000 pounds" for "weighing 3,000 pounds gross or less" near the beginning of subdivision (6).

is to produce a driving light sufficient, under normal atmospheric conditions, to enable the operator to see a person 200 feet ahead. *O'Berry v. Perry*, 266 N.C. 77, 145 S.E.2d 321 (1965); *Miller v. Wright*, 272 N.C. 666, 158 S.E.2d 824 (1968).

The adequacy of headlights upon a motor vehicle, in normal atmospheric conditions, is determined by this section and § 20-131. *Miller v. Wright*, 272 N.C. 666, 158 S.E.2d 824 (1968).

Evidence Showing Violation of Section.—

See *White v. Mote*, 270 N.C. 544, 155 S.E.2d 75 (1967).

Applied in *Griffin v. Watkins*, 269 N.C. 650, 153 S.E.2d 356 (1967).

§ 20-130.1. Use of red lights on front of vehicles prohibited; exceptions. It shall be unlawful for any person to drive upon the highways of this State any vehicle displaying red lights visible from the front of said vehicle. The provisions of this section shall not apply to police cars, highway patrol cars, vehicles owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes, ambulances, fire-fighting vehicles, school buses, a

vehicle operated in the performance of his duties or services by any member of a municipal or rural fire department, paid or voluntary, or vehicles of a voluntary life-saving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call or to such lights as may be prescribed by the Interstate Commerce Commission. The provisions of this section shall not apply to motor vehicles used in law enforcement by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, regardless of whether or not the vehicle is owned by the county. (1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1.)

Editor's Note.—The 1967 amendment, effective Jan. 1, 1968, deleted "wreckers" and "maintenance or construction vehicles or equipment of the State Highway Com-

mission engaged in performing maintenance or construction work on the roads" from the list of exempted vehicles in the second sentence.

§ 20-130.2. Use of amber lights on certain vehicles.—All wreckers operated on the highways of the State shall be equipped with an amber colored flashing light which shall be so mounted and located as to be clearly visible in all directions from a distance of 500 feet. It shall be lawful to equip any other vehicle with a similar warning light including, but not by way of limitation, maintenance or construction vehicles or equipment of the State Highway Commission engaged in performing maintenance or construction work on the roads, maintenance or construction vehicles of any person, firm or corporation, and any other vehicles required to contain a warning light. (1967, c. 651, s. 2.)

Editor's Note.—Section 3, c. 651, Session Laws 1967, provides that the act shall become effective Jan. 1, 1968.

§ 20-131. Requirements as to head lamps and auxiliary driving lamps.

The function of a front light or headlight, defined by § 20-129 and this section, is to produce a driving light sufficient, under normal atmospheric conditions, to enable the operator to see a person 200 feet ahead. *O'Berry v. Perry*, 266 N.C. 77, 145 S.E.2d 321 (1965); *Miller v. Wright*, 272 N.C. 666, 158 S.E.2d 824 (1968).

The adequacy of headlights upon a

motor vehicle, in normal atmospheric conditions, is determined by this section and § 20-129. *Miller v. Wright*, 272 N.C. 666, 158 S.E.2d 824 (1968).

The function of a parking light is to enable a vehicle parked or stopped upon the highway to be seen under similar conditions from a distance of 500 feet to the front of such vehicle. *O'Berry v. Perry*, 266 N.C. 77, 145 S.E.2d 321 (1965).

§ 20-134. Lights on parked vehicles.

The function of a parking light is to enable a vehicle parked or stopped upon the highway to be seen under similar conditions from a distance of 500 feet to the front of such vehicle. *O'Berry v. Perry*, 266 N.C. 77, 145 S.E.2d 321 (1965).

This section is inapplicable, etc.—

The provisions of this section are not applicable to defendants' truck parked or stopped on a street in the city when plaintiff has neither allegation nor proof to show that the street forms a part of the State highway system. *Coleman v. Burris*, 265 N.C. 404, 144 S.E.2d 241 (1965).

Violation Is Negligence Per Se.—

In accord with 4th paragraph in origi-

nal. See *Faison v. T & S Trucking Co.*, 266 N.C. 383, 146 S.E.2d 450 (1966).

A violation of this provision is negligence per se. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

Jury Question.—

It is for the jury to decide whether, upon the evidence, a violation of this statute was a proximate cause of decedent's injuries. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

Stated in *Puryear v. Cooper*, 2 N.C. App. 517, 163 S.E.2d 299 (1968).

Cited in *Vann v. Hayes*, 266 N.C. 713, 147 S.E.2d 186 (1966).

§ 20-135.2. Safety belts and anchorages.

Seat belt enactments are not absolute safety measures and no statutory duty to use the belts can be implied from them. *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968).

The failure of a guest passenger to use an available seat belt does not constitute contributory negligence barring recovery by the passenger for personal injuries received in an automobile accident caused by

defendant driver's negligence. *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968).

Nor Does It Invoke Doctrine of Avoidable Consequences.—The doctrine of avoidable consequences is not invoked by the failure of plaintiff guest passenger to use an available seat belt, since the failure to fasten the seat belt occurs before defendant's negligence. *Miller v. Miller*, 273 N.C. 228, 160 S.E.2d 65 (1968).

§ 20-135.3. Seat belt anchorages for rear seats of motor vehicles.

Cross Reference.—See note to § 20-135.2.

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138. Persons under the influence of intoxicating liquor or narcotic drugs.

Elements of Offense.—

The three elements of the offense under this section are (1) driving a vehicle, (2) upon a highway within the State, (3) while under the influence of intoxicating liquor. *State v. Kellum*, 273 N.C. 348, 160 S.E.2d 76 (1968).

Narcotic Drugs, Not Drugs, Are within Prohibition of Section.—This section prohibits the operation of an automobile on a highway within the State while under the influence of narcotic drugs, not under the influence of drugs. *State v. Best*, 265 N.C. 477, 144 S.E.2d 416 (1965).

Duplicity.—As to the duplicity of charging two of the criminal offenses created and defined in this section, see *State v. Thompson*, 257 N.C. 452, 126 S.E.2d 58 (1962). *State v. Strouth*, 266 N.C. 340, 145 S.E.2d 852 (1966).

And Waiver Thereof.—In a prosecution under this section, by going to trial without making a motion to quash, defendant waives any duplicity which might exist in the bill. *State v. Strouth*, 266 N.C. 340, 145 S.E.2d 852 (1966).

In a prosecution under this section, by going to trial without making a motion to quash, defendant waives any duplicity in the warrant. *State v. Strouth*, 266 N.C. 340, 145 S.E.2d 852 (1966).

Circumstantial Evidence May Suffice.—

Where the State relied upon circumstantial evidence, from which there could be little doubt that the defendant's car collided with another; although the defendant said he had been hit from the rear, he admitted a collision; his radiator was leaking; the officer had followed a trail of water from the scene of collision to the point where he found the defendant and his car, and the car was hot, stopped, and

wouldn't run, and with a bluish paint on it that resembled the bluish paint of the other car, the jury was fully justified in finding that the defendant, when seen by the officer, and later tested by the breathalyzer, was, if anything, less intoxicated than at the time of the collision. *State v. Cummings*, 267 N.C. 300, 148 S.E.2d 97 (1966).

Testimony as to Results, etc.—

A qualified expert may testify as to the effect of certain percentages of alcohol in the bloodstream of human beings, provided the blood sample analyzed was timely taken, properly traced, and identified. *State v. Webb*, 265 N.C. 546, 144 S.E.2d 619 (1965).

Result of Breathalyzer Test Is Competent Evidence.—The result of a breathalyzer test, when the qualifications of the person making the test and the manner of making it meet the requirements of § 20-139.1, is competent evidence in a criminal prosecution under this section. *State v. Cooke*, 270 N.C. 644, 155 S.E.2d 165 (1967).

Policeman May Arrest without Warrant.—

A highway patrolman apprehending a person driving a motor vehicle on the public highway while under the influence of intoxicating liquor is authorized, by virtue of the provisions of § 20-188 and subdivision (1) of § 15-41, to arrest such person without a warrant, and such arrest is legal. *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

In a prosecution for drunken driving, etc.—

In a prosecution under this section, two highway patrolmen who investigated the accident in which defendant was involved

just before his arrest were properly allowed to testify that in their opinion defendant was under the influence of intoxicating liquor. *State v. Mills*, 268 N.C. 142, 150 S.E.2d 13 (1966).

Violation of Section, etc.—

Violation of this section is negligence per se. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967); *Arant v. Ransom*, 4 N.C. App. 89, 165 S.E.2d 671 (1969).

Evidence Not Directly Showing that Defendant Drove While Intoxicated. — Where the State's evidence impressively shows that the defendant operated a motor vehicle upon the streets of a city and that he was intoxicated, but the defendant complains that it doesn't directly show that he drove while he was intoxicated, his position is well taken unless the evidence will reasonably and logically sustain such a finding. *State v. Cummings*, 267 N.C. 300, 148 S.E.2d 97 (1966).

Evidence Sufficient for Jury.—

The State's evidence was amply sufficient to carry the case to the jury on the charge of driving while intoxicated. *State v. Mills*, 268 N.C. 142, 150 S.E.2d 13 (1966).

Jury Questions.—Whether decedent in an action for wrongful death was intoxicated was a question for the jury. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

The jury would have to find that decedent's drunkenness, and not defendants' negligence, was a proximate cause of the accident, before finding that decedent was

contributorily negligent. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

Punishment, etc.—

The offense condemned by this section is a general misdemeanor for which an offender, for the first offense, may be imprisoned for two years in the discretion of the court. *State v. Morris*, 275 N.C. 50, 165 S.E.2d 245 (1969).

Section 20-179 fixes no maximum period of imprisonment as punishment for the first offense of a violation of this section, and it is well-settled law in this jurisdiction that when no maximum time is fixed by the statute an imprisonment for two years will not be held cruel or unusual punishment, as prohibited by N.C. Const., Art. I, § 14. *State v. Morris*, 275 N.C. 50, 165 S.E.2d 245 (1969).

Applied in *State v. Mohrmann*, 265 N.C. 594, 144 S.E.2d 645 (1965); *State v. Stauffer*, 266 N.C. 358, 145 S.E.2d 917 (1966); *State v. Ferebee*, 266 N.C. 606, 146 S.E.2d 666 (1966); *State v. Green*, 266 N.C. 785, 147 S.E.2d 377 (1966); *State v. Hall*, 267 N.C. 90, 147 S.E.2d 548 (1966); *State v. Choplin*, 268 N.C. 461, 150 S.E.2d 851 (1966); *State v. Owens*, 272 N.C. 100, 157 S.E.2d 658 (1967); *State v. Randolph*, 273 N.C. 120, 159 S.E.2d 324 (1968); *State v. Cline*, 4 N.C. App. 112, 165 S.E.2d 691 (1969).

Cited in *Cline v. Atwood*, 267 N.C. 182, 147 S.E.2d 885 (1966).

§ 20-139.1. Result of a chemical analysis admissible in evidence; presumption.—(a) In any criminal action arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's breath or blood shall be admissible in evidence and shall give rise to the following presumptions:

- (1) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.
- (2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.
- (3) The provisions of this section shall not be construed as limiting the introduction of any other competent evidence, including other types of chemical analyses, bearing upon the question whether the person was under the influence of intoxicating liquor.

(b) Chemical analyses of the person's breath or blood, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health and by an individual possessing a valid permit issued by the State Board of Health for this purpose. The State Board of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation

at the discretion of the State Board of Health; provided, that in no case shall the arresting officer or officers administer said test.

(c) When a person shall submit to a blood test at the request of a law-enforcement officer under the provisions of G.S. 20-16.2 only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. No such person shall be held to answer in any criminal or civil action for assault or battery by reason of withdrawing blood from another under this section; provided, however, that no person shall be relieved of liability for negligent acts or omissions in withdrawing blood from another under the provisions of this section.

(d) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law-enforcement officer. The failure or inability of the person tested to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law-enforcement officer. Any law-enforcement officer having in his charge any person who has submitted to the chemical test under the provisions of G.S. 20-16.2 shall assist such person in contacting a qualified person as set forth above for the purpose of administering such additional test.

(e) The individual making such chemical analysis of a person's breath shall record in writing the time of arrest and the time and results of such analysis, a copy of which record shall be furnished to the person submitting to said test or to his attorney prior to any trial or proceeding where the results of the test may be used.

(f) If a person under arrest refuses to submit to a chemical test under the provisions of G.S. 20-16.2, evidence of refusal shall be admissible in any criminal action arising out of acts alleged to have been committed while the person was driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor.

(g) The State Board of Health is empowered to make regulations concerning the ingestion of controlled amounts of beverages containing ethyl alcohol by individuals submitting to chemical analyses as a part of scientific, experimental, educational, or demonstration programs. Such regulations shall prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of ethyl alcohol or of beverages containing ethyl alcohol intended for use in such programs. Any person acquiring ethyl alcohol or beverages containing ethyl alcohol under such regulations shall keep records accounting for the disposition of all ethyl alcohol and beverages containing ethyl alcohol so acquired, and such records shall at all reasonable times be available for inspection upon the request of any federal or State law-enforcement officer with jurisdiction over the laws relating to alcohol or intoxicating liquor. All acts done pursuant to such regulations reasonably in furtherance of bona fide objectives of the chemical testing program within this State shall be lawful notwithstanding the provisions of any other general, special, or local statute or any ordinance or regulation of the State or of any agency or subdivision of the State. Regulations of the State Board of Health adopted pursuant to this section shall be filed and published in accordance with the provisions of G.S. 143-195 to G.S. 143-198.1. (1963, c. 966, s. 2; 1967, c. 123; 1969, c. 1074, s. 2.)

Editor's Note. — The 1969 amendment, effective Sept. 1, 1969, rewrote this section as previously amended in 1967.

Most of the cases cited in the note below were decided prior to the 1969 amendment.

For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

Opinions of Attorney General. — Mr. Howard D. Cole, Assistant Prosecutor, Eighteenth Judicial District, 9/19/69.

Meaning of "Presumption". — In this section, the General Assembly used the word "presumption" in the sense of a permissive inference or "prima facie" evidence. State

v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967); State v. Jent, 270 N.C. 652, 155 S.E.2d 171 (1967).

And the trial judge should so instruct the jury. State v. Jent, 270 N.C. 652, 155 S.E.2d 171 (1967).

The words "it shall be presumed" are equivalent to "prima facie" proof. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

In this section, the General Assembly did not intend to create a so-called conclusive presumption since it specifically provided that "any other competent evidence, including other types of chemical analyses," bearing upon the issue of defendant's intoxication may be introduced. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Nor to Shift the Burden of Proof.—The legislature did not intend to shift the burden of proof to a defendant whose breathalyzer tests show a blood alcohol level of 0.10 percent or more to prove that he was not under the influence of intoxicating liquor at the time charged. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Result of Breathalyzer Test Is Competent Evidence.—The result of a breathalyzer test, when the qualifications of the person making the test and the manner of making it meet the requirements of this section, is competent evidence in a criminal prosecution under § 20-138. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Defendant's objections to the results of a breathalyzer test are not sustained where, before being permitted to testify, the officer who had administered the test was questioned preliminarily and his answers tended to show that the tests were made in compliance with this section and the regulations of the State Board of Health as set forth in this section. State v. Cummings, 267 N.C. 300, 148 S.E.2d 97 (1966).

And May Carry State's Case to Jury.—A breathalyzer test (otherwise relevant and competent) which shows 0.10 percent or more by weight of alcohol in a defendant's blood will carry the State's case to the jury for its determination of whether defendant was under the influence of intoxicating liquor at the time charged. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

§ 20-140. Reckless driving.

This section is a safety, etc.—

This section is a safety statute, designed for the protection of life, limb and property. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

But Jury Is Still at Liberty to Acquit.—Despite the results of the breathalyzer test, the jury is still at liberty to acquit defendant if they find that his guilt is not proven beyond a reasonable doubt, and the court should explain this to the jury. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Test Must Have Been Timely Made.—For the test to cast any light on a defendant's condition at the time of the alleged crime, the test must have been timely made. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

The breathalyzer can measure only the amount of alcohol which is in a person's blood at the time the test is given. Therefore, the presumption or inference which this section raises when the test shows 0.10 percent or more of blood alcohol relates only to the time of the test. Since it is the degree of intoxication at the time of the occurrence in question which is relevant, it is undoubtedly true that the sooner after the event the test is made, the more accurate will be the estimate of blood alcohol concentration at the time of the act in issue. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

The purpose of the limitation in subsection (b) of this section is to assure that the test will be fairly and impartially made. State v. Stauffer, 266 N.C. 358, 145 S.E.2d 917 (1966).

"Arresting Officer".—An officer, who is present at the scene of the arrest for the purpose of assisting in it, if necessary, is an "arresting officer" within the meaning of this section, even though a different officer actually places his hand upon the defendant and informs him that he is under arrest. State v. Stauffer, 266 N.C. 358, 145 S.E.2d 917 (1966).

Charge on Force and Effect of Presumption.—On the force and effect of the "presumption" created by this section, the judge should charge the jury in accordance with the opinion in State v. Bryant, 245 N.C. 645, 97 S.E.2d 264 (1957), wherein are collected and analyzed the cases dealing with "prima facie or presumptive evidence" created by statute. State v. Cooke, 270 N.C. 644, 155 S.E.2d 165 (1967).

Applied in State v. Randolph, 273 N.C. 120, 159 S.E.2d 324 (1968); State v. Mobley, 273 N.C. 471, 160 S.E.2d 334 (1968).

Every operator of a motor vehicle is required, etc.—

This section requires every operator of a motor vehicle to exercise reasonable care to avoid injury to persons or property

of another and a failure to so operate proximately causing injury to another gives rise to a cause of action. *Miller v. Lucas*, 267 N.C. 1, 147 S.E.2d 537 (1966).

Duty of Motorist.—A motorist must operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when any special hazard exists with respect to pedestrians, and, if circumstances warrant, he must give warning of his approach by sounding his horn. *Morris v. Minix*, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

A motorist must at all times operate his vehicle with due caution and circumspection, with due regard for the rights and safety of others, and at such speed and in such manner as will not endanger or be likely to endanger the lives or property of others. *Morris v. Minix*, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

Allegations of reckless driving in the words of this section, without more, do not justify a charge on reckless driving. *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968); *Nance v. Williams*, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

Allegations as to reckless driving in the words of this section, without specifying wherein the party was reckless, amount to no more than an allegation that the party charged was negligent. They are but conclusions of law which are not admitted by demurrer. They do not justify a charge on reckless driving. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Pleading Reckless Driving Effectively.—To plead reckless driving effectively, a party must allege facts which show that the other was violating specific rules of the road in a criminally negligent manner. *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968); *Nance v. Williams*, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

To plead reckless driving effectively, the pleader must particularize with reference to the specific rules of the road which the motorist was violating and his manner of doing so. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Reckless driving is made up of continuing acts, or a series of acts, which, in themselves, constitute negligence. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

When Person Guilty, etc.—

Neither the intentional nor the unintentional violation of a traffic law without more constitutes reckless driving. *Ingle v.*

Roy Stone Transf. Corp., 271 N.C. 276, 156 S.E.2d 265 (1967).

A violation of this section, etc.—

A violation of this section gives rise to both civil and criminal liability. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

The language of this section, etc.—

The language in each subsection of the reckless driving statute defines culpable negligence. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Culpable Negligence, etc.—

Culpable negligence is such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others. The intentional, wilful or wanton violation of a safety statute or ordinance which proximately results in injury is culpable negligence; an unintentional violation, unaccompanied by recklessness or probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, is not. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is wilful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Weston*, 273 N.C. 275, 159 S.E.2d 883 (1968).

A motorist is under duty at all times, etc.—

In accord with original. See *Price v. Miller*, 271 N.C. 690, 157 S.E.2d 347 (1967).

Mere failure, etc.—

In accord with original. See *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Violation of Section, etc.—

A violation of this section is negligence per se. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Rear-End Collision.—While the fact of a rear-end collision offers some evidence of negligence, it is not sufficient to present the question of defendant's violation of this section, when the fact of accident is combined only with the failure to keep a proper lookout, and not with excessive speed or

following too closely. *Nance v. Williams*, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

It is not sufficient for the judge to read this section and then leave it to the jury to apply the law to the facts and to decide for themselves what plaintiff did, if anything, which constituted reckless driving. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967); *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968); *Nance v. Williams*, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

Entering Intersection Closely in Front of Plainly Visible Automobile.—The act of a driver in entering an intersection so closely in front of an automobile plainly visible to him approaching along an intersecting four-lane highway, that the driver of the car does not have sufficient time in the exercise of reasonable care to avoid a collision, constitutes a violation of subsections (a) and (b) of this section, and is negligence per se. *Snell v. Caudle Sand & Rock Co.*, 267 N.C. 613, 148 S.E.2d 608 (1966).

Evidence Not Disclosing Careless and Reckless Driving.—Evidence, while sufficient to present the question of negligence, did not disclose careless and reckless driving within the purview of this section. *Williams v. Boulterice*, 269 N.C. 499, 153 S.E.2d 95 (1967).

The charge, etc.—

If a party has properly pleaded reckless driving and the judge undertakes to charge upon it, § 1-180 requires him to tell the jury what facts they might find from the

evidence would constitute reckless driving. *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968); *Nance v. Williams*, 2 N.C. App. 345, 163 S.E.2d 47 (1968).

When the judge has correctly instructed the jury upon the law applicable to the various acts of negligence upon which the pleadings and evidence require a charge, there is no need to reassemble the parts and present them to the jury in a packaged proposition labeled reckless driving, for the whole is equal to the sum of its parts. If, however, he undertakes to do so, § 1-180 requires him to tell the jury what facts, which they might find from the evidence, would constitute reckless driving. *Ingle v. Roy Stone Transf. Corp.*, 271 N.C. 276, 156 S.E.2d 265 (1967).

Applied in *State v. Abernathy*, 265 N.C. 724, 145 S.E.2d 2 (1965); *Drumwright v. Wood*, 266 N.C. 198, 146 S.E.2d 1 (1966); *Wells v. Bissette*, 266 N.C. 774, 147 S.E.2d 210 (1966); *Atwood v. Holland*, 267 N.C. 722, 148 S.E.2d 851 (1966); *State v. Moses*, 272 N.C. 509, 158 S.E.2d 617 (1968).

Cited in *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966); *Hout v. Harvell*, 270 N.C. 274, 154 S.E.2d 41 (1967); *Mabe v. Green*, 270 N.C. 276, 154 S.E.2d 91 (1967); *Reeves v. Hill*, 272 N.C. 352, 158 S.E.2d 529 (1968); *Toler v. Brink's, Inc.*, 1 N.C. App. 315, 161 S.E.2d 208 (1968); *Rogers v. Rogers*, 2 N.C. App. 668, 163 S.E.2d 645 (1968); *State v. White*, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

§ 20-140.1. Reckless driving upon driveways of public or private institutions, establishments providing parking space, etc.

Quoted in *McCall v. Dixie Cartage & Warehousing, Inc.*, 272 N.C. 190, 158 S.E.2d 72 (1967).

§ 20-140.2. Overloaded or overcrowded vehicle; persons riding on motorcycles to wear safety helmets.

(b) No motorcycle shall be operated upon the streets and highways of this State unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor Vehicles. No person shall operate a motorcycle upon the streets and highways of this State when the number of persons upon such motorcycle, including the operator, shall exceed the number of persons for which it was designed to carry. Violation of any provision of this subsection shall not be considered negligence per se or contributory negligence per se in any civil action.

(1967, c. 674, s. 1.)

Editor's Note.—The 1967 amendment, effective Jan. 1, 1968, rewrote subsection (b).

As subsections (a) and (c) were not changed by the amendment, they are not set out.

Constitutionality.—Subsection (b) of this section does not contravene any provision of either State or federal Constitutions. *State v. Anderson*, 3 N.C. App. 124, 164 S.E.2d 48 (1968).

The requirement of subsection (b) that

the operator of a motorcycle on a public highway wear a protective helmet is constitutional as a valid exercise of the police power since the statute bears a real and

substantial relationship to public safety. State v. Anderson, 275 N.C. 168, 166 S.E.2d 49 (1969).

§ 20-141. Speed restrictions.—(a) No person shall drive a vehicle on a highway or on any parking lot, drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, benevolent institution, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public at a speed greater than is reasonable and prudent under the conditions then existing.

(1967, c. 106.)

Editor's Note.—

The 1967 amendment inserted the language beginning "or on any parking lot" and ending "patrons or the public" in subsection (a).

As the rest of the section was not affected by the amendment, only subsection (a) is set out.

Violation as Constituting Negligence.—

In accord with 9th paragraph in original. See Stegall v. Sledge, 247 N.C. 718, 102 S.E.2d 115 (1958); Price v. Miller, 271 N.C. 690, 157 S.E.2d 347 (1967).

In accord with 14th paragraph in original. See Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

It is well settled by an unbroken line of North Carolina Supreme Court decisions that the operation of a motor vehicle in excess of the applicable limits set forth in subsection (b) of this section is negligence per se. Edwards v. Mayes, 385 F.2d 369 (4th Cir. 1967).

A violation of subsection (b) (3) of this section is negligence per se. Smart v. Fox, 268 N.C. 284, 150 S.E.2d 403 (1966).

Where defendant was driving in excess of the maximum speed which would have been reasonable and prudent under the conditions then prevailing, and failed to reduce his speed in approaching and entering the intersection, he was driving in violation of this section, and was guilty of negligence. Raper v. Byrum, 265 N.C. 269, 144 S.E.2d 38 (1965).

Violation Must Proximately Cause Injury.—

The violation of subsection (c) constitutes negligence per se. However, in order for there to be actionable negligence such violation must be a proximate cause of the injury in suit, including the essential element of foreseeability. Day v. Davis, 268 N.C. 643, 151 S.E.2d 556 (1966).

This section prescribes a standard, etc.—

The duty of a driver to decrease his

speed is governed by the duty of all persons to use "due care," and is tested by the usual legal requirements and standards such as proximate cause. Day v. Davis, 268 N.C. 643, 151 S.E.2d 556 (1966).

This section establishes the maximum speed at which motor vehicles are permitted to travel lawfully on the highways of the State, in a business district, in a residential district, and in other places. Clark v. Jackson, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

Duty of Motorist.—A motorist must operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when any special hazard exists with respect to pedestrians, and, if circumstances warrant, he must give warning of his approach by sounding his horn. Morris v. Minix, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

Colliding with Vehicle Parked on Highway, etc.—

In accord with 5th paragraph in original. See Sharpe v. Hanline, 265 N.C. 502, 144 S.E.2d 574 (1965).

A motorist is not required to anticipate that an automobile will be stopped on the highway ahead of him at night, without lights or warning signals required by statute, but this does not relieve him of the duty of exercising reasonable care for his own safety, of keeping a proper lookout, and proceeding as a reasonably prudent person would under the circumstances to avoid a collision with the rear of a vehicle stopped or standing on the road. Bass v. McLamb, 268 N.C. 395, 150 S.E.2d 856 (1966).

The operator of a standing or parked vehicle which constitutes a source of danger to other users of the highway is generally bound to exercise ordinary or reasonable care to give adequate warning or notice to approaching traffic of the presence of the

standing vehicle, and such duty exists irrespective of the reason for stopping the vehicle on the highway. So the driver of the stopped vehicle must take such precautions as would reasonably be calculated to prevent injury, whether by the use of lights, flags, guards, or other practical means, and failing to give such warning may constitute negligence. *Bass v. McLamb*, 268 N.C. 395, 150 S.E.2d 856 (1966).

Motorist Must Decrease Speed, etc.—

See *Price v. Miller*, 271 N.C. 690, 157 S.E.2d 347 (1967).

Reduction of Speed at Intersection Not Required in All Circumstances.—This section does not require the driver of a vehicle to reduce the speed of his vehicle in all circumstances when approaching and crossing an intersection. *Rogers v. Rogers*, 2 N.C. App. 668, 163 S.E.2d 645 (1968).

The fact that the speed of a vehicle is lower than the maximum speed limit at that particular place does not relieve the driver thereof from the duty to decrease speed when approaching and crossing an intersection, when, in the exercise of due care, he should decrease his speed in order to avoid causing injury to any person or property, and a failure to do so is negligence per se, and if the proximate cause of an injury would create liability. *Rogers v. Rogers*, 2 N.C. App. 668, 163 S.E.2d 645 (1968).

Inability to Stop within Radius, etc.—

In accord with 2nd paragraph in original. See *Coleman v. Burris*, 265 N.C. 404, 144 S.E.2d 241 (1965); *Bass v. McLamb*, 268 N.C. 395, 150 S.E.2d 856 (1966); *Duke v. Tankard*, 3 N.C. App. 563, 165 S.E.2d 524 (1969).

Prior to April 29, 1953, the effective date of subsection (e) of this section, the failure of a nocturnal motorist to drive in such a manner and at such a speed that he could stop his vehicle within the radius of his headlights or range of his vision was negligence, or contributory negligence, per se. Subsection (e), which modified this rule, by its terms does not apply, however, when a motorist is operating his vehicle in excess of the maximum speed limits fixed by subsection (b). *Griffin v. Watkins*, 269 N.C. 650, 153 S.E.2d 356 (1967).

The proviso in subsection (e) does not apply if it is admitted, or if all the evidence discloses, that the motor vehicle was being operated in excess of the maximum speed limit under the existing circumstances as prescribed under subsection (b). *Bass v. McLamb*, 268 N.C. 395, 150 S.E.2d 856 (1966).

Driving on Snow or Ice. — One is not

negligent per se in driving an automobile on a highway covered with snow or ice. *Bass v. McLamb*, 268 N.C. 395, 150 S.E.2d 856 (1966).

Skidding.—The skidding of an automobile is not in itself, and without more, evidence of negligence. *Bass v. McLamb*, 268 N.C. 395, 150 S.E.2d 856 (1966); *Clark v. Jackson*, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

The mere skidding of a motor vehicle is not evidence of, and does not imply, negligence. *Clark v. Jackson*, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

But the skidding of an automobile may be evidence of negligence, if it appears that it was caused by a failure to exercise reasonable precaution to avoid it, when the conditions at the time made such a result probable in the absence of such precaution. *Clark v. Jackson*, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise care commensurate with the danger, to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. *Clark v. Jackson*, 4 N.C. App. 277, 166 S.E.2d 501 (1969).

Speed in excess, etc.—

Where there is evidence from which the jury could draw a reasonable inference that the defendant was driving at a speed in excess of the statutory limit, the court must instruct the jury, without special request therefor, that if it finds from the evidence that defendant was operating its motor vehicle in excess of the speed limit such conduct would constitute negligence per se. A failure to so instruct the jury is prejudicial error which requires reversal and a new trial. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

The jury should have been instructed on the effect of violations of subsections (a) and (c) of this section, where, under proper instruction, it would have been possible for the jury to conclude that defendant, in the exercise of due and reasonable care, could or should have seen the decedent's vehicle stopped on the highway. *Edwards v. Mayes*, 385 F.2d 369 (4th Cir. 1967).

Instruction Held Sufficient.—Instruction charging duty of motorist operating a vehicle with worn, slick tires on a wet and slippery highway held sufficient. *First Union Nat'l Bank v. Hackney*, 270 N.C. 437, 154 S.E.2d 512 (1967).

Penalty. — Every person convicted of speeding in violation of this section, where the speed is not in excess of eighty miles

per hour, shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment. State v. Tolley, 271 N.C. 459, 156 S.E.2d 858 (1967).

Applied in Drumwright v. Wood, 266 N.C. 198, 146 S.E.2d 1 (1966); Wells v. Bissette, 266 N.C. 774, 147 S.E.2d 210 (1966); Atwood v. Holland, 267 N.C. 722, 148 S.E.2d 851 (1966); White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967); State v. Massey, 271 N.C. 555, 157 S.E.2d 150

(1967); State v. Moses, 272 N.C. 509, 158 S.E.2d 617 (1968); Pelkey v. Bynum, 2 N.C. App. 183, 162 S.E.2d 586 (1968).

Quoted in Kanoy v. Hinshaw, 273 N.C. 418, 160 S.E.2d 296 (1968).

Cited in Wilkins v. Turlington, 266 N.C. 328, 145 S.E.2d 892 (1966); Webb v. Felton, 266 N.C. 707, 147 S.E.2d 219 (1966); Barefoot v. Joyner, 270 N.C. 388, 154 S.E.2d 543 (1967); Reeves v. Hill, 272 N.C. 352, 158 S.E.2d 529 (1968); Anderson v. Carter, 272 N.C. 426, 158 S.E.2d 607 (1968); Swain v. Williamson, 4 N.C. App. 622, 167 S.E.2d 491 (1969).

§ 20-141.1. Restrictions in speed zones near rural public schools.—Whenever the State Highway Commission shall determine that the proximity of a public school to a public highway, coupled with the number of pupils in ordinary regular attendance at such school, results in a situation that renders the applicable speed set out in G.S. 20-141 greater than is reasonable or safe, under the conditions found to exist with respect to any public highway near such school, said Commission shall establish a speed zone on such portion of said public highway near such school as it deems necessary, and determine and declare a reasonable and safe speed limit for such speed zone, which shall be effective when appropriate signs giving notice thereof are erected at each end of said zone so as to give notice to any one entering the zone. This section does not apply with respect to any portion of any street or highway within the corporate limits of any incorporated city or town. Operation of a motor vehicle in any such zone at a rate of speed in excess of that fixed pursuant to the powers granted in this section is a misdemeanor punishable by fine or imprisonment not to exceed two years, or both, in the discretion of the court. (1951, c. 782; 1957, c. 65, s. 11; 1967, c. 448.)

Editor's Note.—The 1967 amendment inserted "not to exceed two years" near the end of the last sentence.

§ 20-141.3. Unlawful racing on streets and highways.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or imprisonment not to exceed two years, or both, in the discretion of the court.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of article 2 of chapter 20 of the General Statutes.

(1967, c. 446; 1969, c. 186, s. 3.)

Editor's Note.—

The 1967 amendment inserted "not to exceed two years" in the second sentence of subsection (c).

The 1969 amendment deleted the last sentence of subsection (f).

As only subsections (c) and (f) were affected by the amendments, the rest of the section is not set out.

§ 20-143. Vehicles must stop at certain railway grade crossings.—The road governing body (whether State or county) is hereby authorized to designate grade crossings of steam or interurban railways by State and county

highways, at which vehicles are required to stop, respectively, and such railways are required to erect signs thereat notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway tracks, and whenever any such crossing is so designated and sign-posted it shall be unlawful for the driver of any vehicle to fail to stop within fifty feet, but not closer than ten feet, from such railway tracks before traversing such crossing. No failure so to stop, however, shall be considered contributory negligence *per se* in any action against the railroad or interurban company for injury to person or property; but the facts relating to such failure to stop may be considered with the other facts in the case in determining whether the plaintiff was guilty of contributory negligence. (1937, c. 407, s. 105; 1969, c. 1231, s. 1.)

Editor's Note.—

The 1969 amendment, effective Sept. 1, 1969, deleted, at the end of the section, a proviso reading: "Provided, that all school trucks and passenger busses be required to come to a complete stop at all railroad crossings." For present provisions as to busses stopping at railroad crossings, see § 20-143.1.

Test.—The test is whether a reasonably prudent man, knowing the custom of the crossing signals by bell and whistle and also the automatic signals, would approach the track in the reasonable belief that no train was approaching. *Earnhardt v. Southern Ry.*, 281 F. Supp. 585 (M.D.N.C. 1968).

Extenuating Circumstances May Relax Diligence Required of Traveller. — While ordinarily a driver would be guilty of contributory negligence as a matter of law be-

cause he did not stop when he was 25 feet from the track where he could have seen the train if he had looked, extenuating circumstances may relax the diligence required of the traveller. In the instant case the jury could reasonably conclude the driver was listening for crossing signals, but they were not given, and looking for the automatic signals which normally would warn him if a train was approaching, and at the time he got within 25 feet of the track, he was misled by the failure of the automatic signals and the failure of the defendant to give any warning of any kind of the train which approached at 60 miles per hour or 88 feet per second. *Earnhardt v. Southern Ry.*, 281 F. Supp. 585 (M.D.N.C. 1968).

Quoted in *Price v. Seaboard Air Line R.R.*, 274 N.C. 32, 161 S.E.2d 590 (1968).

§ 20-143.1. Certain vehicles must stop at all railroad grade crossings.—(a) The driver of every school bus, every motor vehicle carrying passengers for compensation and every property hauling motor vehicle licensed in excess of 10,000 pounds which is carrying explosives or any dangerous article as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 10 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for any signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. Upon proceeding, the driver of such vehicle shall cross only in such gear of the vehicle that there shall be no necessity for changing gears and the driver shall not change gears while crossing the track or tracks.

(b) The provisions of this section shall not require the driver of a vehicle to stop:

- (1) At railroad tracks used exclusively for industrial switching purposes within a business district as defined in G.S. 20-38 (1).
- (2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.
- (3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when such gate or flashing signal does not indicate the approach of a train.
- (4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.
- (5) At an industrial or spur line railroad grade crossing marked with a sign

reading "Exempt Crossing," which sign has been erected by or with the consent of the appropriate State or local authority.

(c) "Dangerous article" shall mean any flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, poisonous substances or radioactive materials as hereinafter defined.

- (1) "Flammable liquids" shall mean any liquid which gives off flammable vapors, (as determined by flash point from Tagliabue's open cup tester as used for test of burning oil) at or below a temperature of 80 degrees F.
- (2) "Flammable solids" shall mean any solid substance which is liable, under conditions incident to transportation, to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from its manufacturing or processing.
- (3) "Oxidizing materials" shall mean any substance such as chlorate, permanganate, peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter.
- (4) "Corrosive liquids" shall mean those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action, or in case of leakage, will materially damage or destroy other freight by chemical action, or are liable to cause fire when in contact with organic matter or with certain chemicals.
- (5) "Compressed gas" shall mean any material or mixture having in the container either an absolute pressure exceeding forty pounds per square inch at seventy degrees F., or an absolute pressure exceeding one hundred four pounds per square inch at one hundred thirty degrees F., or both, or any liquid flammable material having a Reid vapor pressure exceeding forty pounds per square inch absolute at one hundred degrees F.
- (6) "Poisonous substances" shall mean liquids and gases of such nature that a very small amount of the gas or vapor of the liquid mixed with air is dangerous to life, or such liquid or solid substance as, upon contact with fire or when exposed to air, gives off dangerous or intensely irritating fumes or substances, which are chiefly dangerous by external contact with the body or by being taken internally.
- (7) "Radioactive materials" shall mean any material or combination of materials that spontaneously emits ionizing radiation.

(d) It shall be unlawful to transport by motor vehicle upon the highways of this State any dangerous article without conspicuously marking or placarding such motor vehicle on each side and on the rear thereof with the word "DANGEROUS" or the common or generic name of the article transported or its principal hazard. Additionally, the rear of every such vehicle shall be conspicuously marked with the words "THIS VEHICLE STOPS AT ALL RAILROAD CROSSINGS."

(e) The provisions of this section shall not apply to taxicabs nor to vehicles subject to the rules and regulations adopted by the North Carolina Utilities Commission and the United States Department of Transportation. (1969, c. 1231, s. 2.)

Editor's Note. — Session Laws 1969, c. 1231, s. 4, makes the act effective Sept. 1, 1969.

§ 20-145. When speed limit not applicable.

Applied in *Campbell v. O'Sullivan*, 4 N.C. App. 581, 167 S.E.2d 450 (1969).

§ 20-146. Drive on right side of roadway; exceptions.

Proximate Cause.—

A violation of this section, when the proximate cause of injury, constitutes actionable negligence. *Anderson v. Webb*, 267 N.C. 745, 148 S.E.2d 846 (1966).

Negligence Per Se.—

In accord with 3rd paragraph in original. See *Anderson v. Webb*, 267 N.C. 745, 148 S.E.2d 846 (1966).

A violation of this section is negligence per se, and when proximate cause of injury or damage is shown, such violation constitutes actionable negligence. *Reeves v. Hill*, 272 N.C. 352, 158 S.E.2d 529 (1968); *Lassiter v. Williams*, 272 N.C. 473, 158 S.E.2d 593 (1968).

Driving Left of Center of Highway.— Where plaintiff sues for injuries or damages caused by an automobile collision and offers evidence showing that defendant was driving left of the center of the highway when the collision occurred, such evidence makes out a prima facie case of actionable negligence. *Reeves v. Hill*, 272 N.C. 352, 158 S.E.2d 529 (1968); *Lassiter v. Williams*, 272 N.C. 473, 158 S.E.2d 593 (1968).

Where evidence that defendant was driving to his left of the center of the highway when a collision occurred is circumstantial,

§ 20-147. Keep to the right in crossing intersections or railroads.

Applied in *Stutts v. Burcham*, 271 N.C. 176, 155 S.E.2d 742 (1967).

Cited in *Hardy v. Tesh*, 5 N.C. App. 107, 167 S.E.2d 848 (1969).

§ 20-148. Meeting of vehicles.

Violation as Negligence.—

In accord with 1st paragraph in original. See *Anderson v. Webb*, 267 N.C. 745, 148 S.E.2d 846 (1966).

A violation of this section is negligence per se, and, when proximate cause of injury or damage is shown, such violation constitutes actionable negligence. *Reeves v. Hill*, 272 N.C. 352, 158 S.E.2d 529 (1968); *Lassiter v. Williams*, 272 N.C. 473, 158 S.E.2d 593 (1968).

Violation Must Be Proximate Cause, etc.—

A violation of this section, when the proximate cause of injury, constitutes actionable negligence. *Anderson v. Webb*, 267 N.C. 745, 148 S.E.2d 846 (1966).

Driving Left of Center of Highway.— Where plaintiff sues for injuries or damages caused by an automobile collision and offers evidence showing that defendant was driving left of the center of the highway when the collision occurred, such evidence makes out a prima facie case of actionable negligence. *Reeves v. Hill*, 272 N.C. 352,

158 S.E.2d 529 (1968); *Lassiter v. Williams*, 272 N.C. 473, 158 S.E.2d 593 (1968).

Where evidence that defendant was driving to his left of the center of the highway when a collision occurred is circumstantial, i.e., based on testimony as to the physical facts at the scene, such evidence may be sufficiently strong to infer negligence and take the case to the jury. *Lassiter v. Williams*, 272 N.C. 473, 158 S.E.2d 593 (1968).

Evidence held sufficient, etc.—

When a plaintiff suing to recover damages for injuries sustained in a collision offers evidence tending to show that the collision occurred when the defendant was driving to his left of the center of the highway, such evidence makes out a prima facie case of actionable negligence. The defendant, of course, may rebut the inference arising from such evidence by showing that he was on the wrong side of the road from a cause other than his own negligence. *Anderson v. Webb*, 267 N.C. 745, 148 S.E.2d 846 (1966).

§ 20-149. Overtaking a vehicle.

And a violation of subsection (b), etc.—

Where, as in subsection (b) of this section, a violation is declared not to be negligence *per se*, the common-law rule of ordinary care applies, and a violation is only evidence to be considered with other facts and circumstances in determining whether the violator used due care. *Kinney v. Goley*, 4 N.C. App. 325, 167 S.E.2d 97 (1969).

But Motorist Not Relieved of All Duty, etc.—

In accord with original. See *Lowe v. Futrell*, 271 N.C. 550, 157 S.E.2d 92 (1967).

No Duty to Sound Horn, etc.—

The provision of this section with reference to a vehicle within a business or residence district was not intended to forbid the overtaking motorist to sound his horn, or to absolve him of the duty to do so, where the circumstances are such that a reasonable man in the position of the overtaking motorist could foresee risk of injury to the person or property of the occupant of the forward vehicle if he undertakes to pass the forward vehicle without such warning. *Lowe v. Futrell*, 271 N.C. 550, 157 S.E.2d 92 (1967).

Failure to Blow Horn Held Evidence of Negligence.—The failure of a bus driver to blow his horn in apt time before attempting to pass a boy on a bicycle, who

was obviously unaware of the overtaking vehicle, is evidence of negligence. *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966).

The fact that the engine of the overtaking vehicle is noisy, or even that it is carrying a rattling load, will not relieve a driver of his duty to give in apt time the warning required by statute. *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966).

The two-foot clearance requirement is a minimum requirement by the express terms of the statute. *Murchison v. Powell*, 269 N.C. 656, 153 S.E.2d 352 (1967).

It Applies to Overtaking and Passing Another Vehicle.—The two-foot clearance required by this section applies to the overtaking and passing of another vehicle, not a horse subject to fright by a sudden noise. *Murchison v. Powell*, 269 N.C. 656, 153 S.E.2d 352 (1967).

Applied in *Simpson v. Lyerly*, 265 N.C. 700, 144 S.E.2d 870 (1965); *Welch v. Jenkins*, 271 N.C. 138, 155 S.E.2d 763 (1967); *Almond v. Bolton*, 272 N.C. 78, 157 S.E.2d 709 (1967).

Stated in *Inman v. Harper*, 2 N.C. App. 103, 162 S.E.2d 629 (1968).

Cited in *Bateman v. Elizabeth City State College*, 5 N.C. App. 168, 167 S.E.2d 838 (1969).

§ 20-150. Limitations on privilege of overtaking and passing.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police officer. For the purposes of this section the words "intersection of highway" shall be defined and limited to intersections designated and marked by the State Highway Commission by appropriate signs, and street intersections in cities and towns.

(1969, c. 13.)

Editor's Note.—

The 1969 amendment deleted "steam or electric" preceding "railway grade crossing" in the first sentence of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Purpose.—The manifest purpose of this section is to promote safety in the operation of automobiles on the highways and not to obstruct vehicular traffic. *Lawson v. Benton*, 272 N.C. 627, 158 S.E.2d 805 (1968).

§ 20-152. Following too closely.

This section fixes no specific distance at which one automobile may lawfully follow another. *Beanblossom v. Thomas*, 266 N.C. 181, 146 S.E.2d 36 (1966).

Interpretation.—This safety statute must be given a reasonable and realistic interpretation to effect the legislative purpose. *Lawson v. Benton*, 272 N.C. 627, 158 S.E.2d 805 (1968).

Applied in *Duckworth v. Metcalf*, 268 N.C. 340, 150 S.E.2d 485 (1966); *Wands v. Cauble*, 270 N.C. 311, 154 S.E.2d 425 (1967); *Stutts v. Burcham*, 271 N.C. 176, 155 S.E.2d 742 (1967).

Determining Proper Space to Be Maintained between Vehicles.—In determining the proper space to be maintained between his vehicle and the one preceding him, a

motorist must take into consideration such variables as the locality, road and weather conditions, other traffic on the highway, the characteristics of the vehicle he is driving, as well as that of the one ahead, the relative speeds of the two, and his ability to control and stop his vehicle should an emergency require it. Thus, the space is determined according to the standard of reasonable care and should be sufficient to enable the operator of the car behind to avoid danger in case of a sudden stop or decrease in speed by the vehicle ahead under circumstances which should reasonably be anticipated by the following driver. *Beanblossom v. Thomas*, 266 N.C. 181, 146 S.E.2d 36 (1966).

Negligence Per Se.—

In accord with 1st paragraph in original. See *Beanblossom v. Thomas*, 266 N.C. 181, 146 S.E.2d 36 (1966).

In accord with 2nd paragraph in original. See *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

Inferences from Fact of Collision.—

Unless the driver of the leading vehicle is himself guilty of negligence, or unless an emergency is created by some third person or other highway hazard, the mere fact of a collision with the vehicle ahead furnishes some evidence that the motorist in the rear was not keeping a proper lookout or that he was following too closely. *Beanblossom v. Thomas*, 266 N.C. 181, 146 S.E.2d 36 (1966).

The mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed or was following too closely.

§ 20-153. Turning at intersection.

Charge to Jury.—

The reference to "subdivision (5) of § 20-38" in the paragraph under this catch-line in the replacement volume should be to "subdivision (12) of § 20-38."

Evidence Insufficient to Show Violation.

—The evidence, as distinguished from defendant's allegations, was insufficient to constitute a basis for the contention that

Griffin v. Ward, 267 N.C. 296, 148 S.E.2d 133 (1966).

Though the mere fact of a collision with a vehicle furnishes some evidence of a violation of this section, or of failure to keep a proper lookout, the mere proof of a collision with a preceding vehicle does not compel either of these conclusions. It merely raises a question for the jury to determine. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

Drivers Charged with Notice That Operation of Each Car in Line Is Affected by Car in Front of It.—Where the plaintiff and defendant had been driving their cars behind a line of cars for a substantial distance, the drivers, in the exercise of reasonable care, were charged with notice that the operation of each car was affected by the one in front of it. They had to maintain such distance, keep such a lookout, and operate at such speed, under these conditions, that they could control their cars under ordinarily foreseeable developments. The defendant did so and was able to stop when it became necessary because the car leading the procession stopped to make a left turn. No less responsibility was cast upon the plaintiff, and therefore a motion to nonsuit the plaintiff's cause of action should have been allowed. *Griffin v. Ward*, 267 N.C. 296, 148 S.E.2d 133 (1966).

The following driver is not an insurer against rear-end collisions, for, even when he follows at a distance reasonable under the existing conditions, the space may be too short to permit a stop under any and all eventualities. *White v. Mote*, 270 N.C. 544, 155 S.E.2d 75 (1967).

plaintiff violated this section. *Kidd v. Burton*, 269 N.C. 267, 152 S.E.2d 162 (1967).

Applied in *Stewart v. Gallimore*, 265 N.C. 696, 144 S.E.2d 862 (1965); *Wands v. Cauble*, 270 N.C. 311, 154 S.E.2d 425 (1967).

Cited in *Almond v. Bolton*, 272 N.C. 78, 157 S.E.2d 709 (1967); *Hardy v. Tesh*, 5 N.C. App. 107, 167 S.E.2d 848 (1969).

§ 20-154. Signals on starting, stopping or turning.

This section imposes, etc.—

This safety statute requires a motorist intending to turn from a direct line (1) to see that the movement can be made in safety, and (2) to give the required signal when the operation of any other vehicle may be affected. The first requirement does not mean that a motorist may not make a left turn unless the circumstances are absolutely free from danger. It means that a motorist must exercise reasonable

care under existing conditions to ascertain that such movement can be made with safety. Infallibility is not required. *Clarke v. Holman*, 274 N.C. 425, 163 S.E.2d 783 (1968).

The requirement that a motorist, etc.—

In accord with 4th paragraph in original. See *Almond v. Bolton*, 272 N.C. 78, 157 S.E.2d 709 (1967).

While it is true that subsection (a) of this section does not mean that a motorist

may not make a left turn on a highway unless the circumstances be absolutely free from danger, he is required to exercise reasonable care in determining that his intended movement can be made in safety. *Petree v. Johnson*, 2 N.C. App. 336, 163 S.E.2d 87 (1968).

The duty to give a signal does not arise unless the operation of some other vehicle may be affected by such movement. When the surrounding circumstances afford him reasonable grounds to conclude that the left turn might affect the operation of another vehicle, then the duty to give the statutory signal is imposed upon him. *Clarke v. Holman*, 274 N.C. 425, 163 S.E.2d 552 (1968).

Whenever the operation of another vehicle will not be affected by starting, stopping, or turning, no signal is required by subsection (a) of this section. *Clarke v. Holman*, 1 N.C. App. 176, 160 S.E.2d 552 (1968).

Person Observing No Vehicles, etc.—

One is not required to give a signal to a motorist who has not yet appeared on the horizon. *Clarke v. Holman*, 274 N.C. 425, 163 S.E.2d 783 (1968).

Right to Assume, etc.—

A person has the right to assume, and to act on that assumption, that the driver of a vehicle approaching from the opposite direction will comply with subsection (a) of this section before making a left turn across his path. *Petree v. Johnson*, 2 N.C. App. 336, 163 S.E.2d 87 (1968).

Driver Must Keep Outlook in Direction of Travel.—It is the duty of the driver of a motor vehicle not merely to look, but to keep an outlook in the direction of travel. *Clarke v. Holman*, 274 N.C. 425, 163 S.E.2d 783 (1968).

A driver is held to the duty of seeing what he ought to have seen. *Clarke v. Holman*, 274 N.C. 425, 163 S.E.2d 783 (1968).

A driver making a left turn must always use the care which a reasonable man would use under like circumstances. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

The care which is reasonable in making a left turn at an intersection depends, in part, upon the nature and dimensions of the vehicle, or combination of vehicles, to be turned and of the load, if any, projecting from the rear thereof. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

It Is Not Necessarily Enough to Look and Give Signal.—In making a left turn, it is not necessarily enough to absolve a driver from negligence that he looked and

gave the statutory signal. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

Hence, when the turning vehicle is drawing behind it a 40-foot pole, it is obvious that a left turn at a right angle will involve some swinging of the end of the pole in an arc through part of the intersection. Evidence of such a turn with such a load is sufficient to permit, though not to require, the jury to find that reasonable care for the safety of other users of the highway demands the stationing of some person at the intersection to stop traffic which may otherwise be imperiled by the turn. *Ratliff v. Duke Power Co.*, 268 N.C. 605, 151 S.E.2d 641 (1966).

Effect of Traffic Signals, etc.—

Where the intersection of streets in a municipality has authorized electric traffic signals, requirements in regard to stopping are controlled by the traffic lights and not by subsection (b) of this section. *Jones v. Holt*, 268 N.C. 381, 150 S.E.2d 759 (1966).

When a motorist approaches an electrically controlled signal at an intersection of streets or highways, he is under the legal duty to maintain a proper lookout and to keep his motor vehicle under reasonable control in order that he may stop before entering the intersection if the green light changes to yellow or red before he actually enters the intersection. Likewise, another motorist, following immediately behind the first motorist, is not relieved of the legal duty to keep his motor vehicle under reasonable control in order that he might not collide with the motor vehicle in front of him in the event the driver of the first car is required to stop before entering the intersection by reason of the signal light changing from green to yellow or red. *Jones v. Holt*, 268 N.C. 381, 150 S.E.2d 759 (1966).

Violation of Section as Negligence Per Se.—

Under this section as it stood before the 1965 amendment, a violation of subsection (a) was negligence per se. *Lowe v. Futrell*, 271 N.C. 550, 157 S.E.2d 92 (1967), in which the court said that it was unnecessary to determine whether the proviso added by the 1965 amendment in subsection (b) was intended to apply to subsection (a).

Since a violation of this section is no longer to be considered negligence per se, the jury, if they find as a fact this section was violated, must consider the violation along with all other facts and circumstances and decide whether, when so considered, the violator has breached his common-law duty of exercising ordinary care.

If a violation of the statute is to be considered negligence *per se*, the jury would not need to perform this function, since the statute, rather than the common-law duty of ordinary care, would provide the applicable standard. *Kinney v. Goley*, 4 N.C. App. 325, 167 S.E.2d 97 (1969).

Section Not Applicable Where Driver Has No Choice.—This section, which provides that the driver of a motor vehicle shall not stop without first seeing that he can do so in safety and that he must give a signal of his intention where the operation of other cars might be affected, is not applicable where the driver has no choice, such as where the driver is confronted with a situation which demands that he stop because the line of cars in front of him has done so, he cannot turn left because of oncoming traffic, and it has been raining and the windows of his car are up so he can give no hand signal. *Griffin v. Ward*, 267 N.C. 296, 148 S.E.2d 133 (1966).

Bicyclist. — Under ordinary circumstances, it is the duty of a bicyclist, before turning from a direct line of travel, to ascertain that the movement can be made in safety, and to signal his intention to make the movement if the operation of any other vehicle will be thereby affected. *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966).

Allegations of complaint held to show that sole proximate cause of collision was negligent left turn made by first defendant across path of second defendant despite allegations that second defendant was concurrently negligent. *Hout v. Harvell*, 270 N.C. 274, 154 S.E.2d 41 (1967); *Mabe*

v. *Green*, 270 N.C. 276, 154 S.E.2d 91 (1967).

Question for Jury.—

It was for the jury to determine whether plaintiff should have reasonably anticipated that the operation of any other vehicle might be affected by his making a right-hand turn. *Kidd v. Burton*, 269 N.C. 267, 152 S.E.2d 162 (1967).

Evidence Sufficient to Show Negligence under Subsection (a).—Evidence to the effect that defendant, traveling in the opposite direction, turned left to enter a private driveway and stopped with her vehicle partially blocking plaintiff's lane of travel, causing plaintiff to swerve off the hard surface to avoid a collision, was sufficient to show negligence by defendant under subsection (a) of this section. *Black v. Wilkinson*, 269 N.C. 689, 153 S.E.2d 333 (1967).

Applied in *Stewart v. Gallimore*, 265 N.C. 696, 144 S.E.2d 862 (1965); *Simpson v. Lyerly*, 265 N.C. 700, 144 S.E.2d 870 (1965); *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966); *Stutts v. Burcham*, 271 N.C. 176, 155 S.E.2d 742 (1967); *Roberts v. Pilot Freight Carriers*, 273 N.C. 600, 160 S.E.2d 712 (1968); *Key v. Merritt-Holland Welding Supplies*, 273 N.C. 609, 160 S.E.2d 687 (1968).

Quoted in *Kanoy v. Hinshaw*, 273 N.C. 418, 160 S.E.2d 296 (1968).

Cited in *Vann v. Hayes*, 266 N.C. 713, 147 S.E.2d 186 (1966); *Underwood v. Gay*, 268 N.C. 715, 151 S.E.2d 596 (1966); *Bate- man v. Elizabeth City State College*, 5 N.C. App. 168, 167 S.E.2d 838 (1969).

§ 20-155. Right-of-way.

(b) The driver of a vehicle approaching but not having entered an intersection and/or junction, shall yield the right-of-way to a vehicle already within such intersection and/or junction whether the vehicle in the junction is proceeding straight ahead or turning in either direction: Provided, that this subsection shall not be interpreted as giving the right-of-way to a vehicle already in an intersection and/or junction when said vehicle is turning either to the right or left unless the driver of said vehicle has given a plainly visible signal of intention to turn as required in § 20-154. Notwithstanding the provisions of this section and § 20-154, a vehicle making a left turn in front of an approaching vehicle does not have the right-of-way unless such movement can be completed with safety prior to the arrival of the approaching vehicle, and when the movement cannot be completed with safety, the driver of the vehicle making the left turn shall yield the right-of-way.

(1967, c. 1053.)

Editor's Note.—

The 1967 amendment added the last sentence in subsection (b).

As the other subsections were not af-

fected by the amendment, they are not set out.

Duty of Driver Approaching, etc.—

Where two drivers approach an uncon-

trolled intersection at the same time, it is the duty of the driver on the left to yield the right-of-way to the vehicle on his right. *Wilder v. Harris*, 266 N.C. 82, 145 S.E.2d 393 (1965).

Right to Assume That Driver, etc.—

In accord with 1st paragraph in original. See *Neal v. Stevens*, 266 N.C. 96, 145 S.E.2d 325 (1965).

When two drivers approach an uncontrolled intersection at the same time, the driver on the right has the right to assume and act on the assumption until given notice to the contrary that the operator of

any vehicle approaching the intersection to the left would obey the law and yield the right-of-way. *Wilder v. Harris*, 266 N.C. 82, 145 S.E.2d 393 (1965).

Subsection (a), etc.—

In accord with 1st paragraph in original. See *Rathburn v. Sorrells*, 5 N.C. App. 212, 167 S.E.2d 800 (1969).

Applied in *Mims v. Dixon*, 272 N.C. 256, 158 S.E.2d 91 (1967); *White v. Hester*, 1 N.C. App. 410, 161 S.E.2d 611 (1968).

Cited in *Farrow v. Baughman*, 266 N.C. 739, 147 S.E.2d 167 (1966); *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

§ 20-156. Exceptions to the right-of-way rule.

Motorist Facing Stop Sign Must Yield.

—Stop signs erected by the State Highway Commission and local authorities on an intersecting highway or street pursuant to subsection (a) of this section are a method of giving the public notice that traffic on one is favored over the other, and a motorist facing a stop sign must yield. *Kelly v. Ashburn*, 256 N.C. 338, 123 S.E.2d 775 (1962); *Galloway v. Hartman*, 271 N.C. 372, 156 S.E.2d 727 (1967).

Failure of a motorist to yield the right-of-way to traffic on a public highway does not compel a finding of contributory negligence as a matter of law when there is evidence that traffic on the highway was faced with a red traffic light and there is no evidence of anything to give notice that

a motorist on the highway would not obey the traffic control signal. *Galloway v. Hartman*, 271 N.C. 372, 156 S.5.2d 727 (1967).

Subsection (a) Applies to Person Riding Animal.—The requirement that a person entering a public highway from a private road or drive must yield the right-of-way to vehicles on the public highway applies to a person riding an animal as well as to a person driving a motor vehicle. *Watson v. Stallings*, 270 N.C. 187, 154 S.E.2d 308 (1967).

Applied in *O'Berry v. Perry*, 266 N.C. 77, 145 S.E.2d 321 (1965).

Quoted in *Payne v. Lowe*, 2 N.C. App. 369, 163 S.E.2d 74 (1968).

Cited in *Campbell v. O'Sullivan*, 4 N.C. App. 581, 167 S.E.2d 450 (1969).

§ 20-157. What to do on approach of police or fire department vehicles; driving over fire hose or blocking fire-fighting equipment.

Applied in *State v. Moses*, 272 N.C. 509, 158 S.E.2d 617 (1968).

§ 20-158. Vehicles must stop and yield right-of-way at certain through highways.

The erection of stop signs, etc.—

In accord with original. See *Payne v. Lowe*, 2 N.C. App. 369, 163 S.E.2d 74 (1968).

Failure to Stop at Intersection Not, etc.—

A violation of this section is not negligence per se. *State v. Williams*, 3 N.C. App. 463, 165 S.E.2d 52 (1969).

Duty of Motorist before Starting, etc.—

This section requires the driver to remain in a private road until he ascertains, by proper lookout, that he can enter the main highway in safety to himself and to others on the highway. *Warren v. Lewis*, 273 N.C. 457, 160 S.E.2d 305 (1968).

The driver along the servient highway is not required to anticipate that a driver on the dominant highway will travel at excessive speed or fail to observe the rules

of the road applicable to him. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

This section not only requires the driver on a servient highway to stop, but such driver is further required to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon. This interpretation incorporates the requirements obtained in § 20-154, that the motorist must see that such movement can be made in safety. *Kanoy v. Hinshaw*, 273 N.C. 418, 160 S.E.2d 296 (1968).

Right-of-Way.—

Where the driver on the servient street is already in the intersection before the vehicle approaching on the dominant street is near enough to the intersection to constitute an immediate hazard, the driver on the

servient street has the right-of-way. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

The fact a motorist on a servient road reaches the intersection a hairsbreadth ahead of one on the dominant highway does not give him the right to proceed. It is his duty to stop and yield the right-of-way unless the motorist on the dominant highway is a sufficient distance from the intersection to warrant the assumption that he can cross in safety before the other vehicle, operated at a reasonable speed, reaches the crossing. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

The right of one starting from, etc.—

In accord with original. See *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965).

Duty of Driver, etc.—

In accord with 1st paragraph in original. See *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965).

Proximate Cause, etc.—

It is not enough for the plaintiff to show that defendant was negligent in driving at an excessive speed, in failing to reduce his speed as he approached and entered the intersection, or in failing to maintain a reasonable and proper lookout. The burden is also upon the plaintiff to prove that such negligence by the defendant was one of the proximate causes of the collision and of his intestate's death. *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965).

Right to Assume That Automobile, etc.—

In accord with 1st paragraph in original.

§ 20-158.1. Erection of "yield right-of-way" signs.

Duty of Driver along Servient Highway.—The driver along the servient highway is not required to anticipate that a driver on the dominant highway will travel at excessive speed or fail to observe the rules of the road applicable to him. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

The fact a motorist on a servient road reaches the intersection a hairsbreadth ahead of one on the dominant highway does not give him the right to proceed. It is his duty to stop and yield the right-of-way unless the motorist on the dominant

See *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965); *Moore v. Hales*, 266 N.C. 482, 146 S.E.2d 385 (1966).

It is reasonable for the operator of an automobile, traveling upon a designated main traveled or through highway and approaching an intersecting highway, to assume until the last moment that a motorist on the servient highway who has actually stopped in obedience to the stop sign will yield the right-of-way to him and will not enter the intersection until he has passed through it. *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965).

Evidence of Negligence and Proximate Cause.—Where plaintiff's intestate brought his automobile to a stop at a point where he had an unobstructed view of the defendants' automobile approaching on the dominant highway, and he resumed his progress into the intersection at a very slow rate of speed when the defendants' automobile was so near to the intersection and moving at such a speed that in the exercise of reasonable prudence he should have seen that he could not cross in safety, his entry into the intersection in this manner and under these conditions was negligence and was one of the proximate causes of the collision and of his death, if not the sole proximate cause thereof. *Raper v. Byrum*, 265 N.C. 269, 144 S.E.2d 38 (1965).

highway is a sufficient distance from the intersection to warrant the assumption that he can cross in safety before the other vehicle, operated at a reasonable speed, reaches the crossing. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

Where the driver on the servient street is already in the intersection before the vehicle approaching on the dominant street is near enough the intersection to constitute an immediate hazard, the driver on the servient street has the right-of-way. *Farmer v. Reynolds*, 4 N.C. App. 554, 167 S.E.2d 480 (1969).

§ 20-161. Stopping on highway.

This section has no reference, etc.—

A mere temporary or momentary stoppage on the highway when there is no intent to break the continuity of the travel is not "parking" or "leave standing" as used in this section. *Wilson v. Lee*, 1 N.C. App. 119, 160 S.E.2d 107 (1968).

This section does not apply to the driver

of a disabled passenger vehicle. *Exum v. Boyles*, 272 N.C. 567, 158 S.E.2d 845 (1968).

This section is inapplicable to a motor vehicle, etc.—

In accord with original. See *Pardon v. Williams*, 265 N.C. 539, 144 S.E.2d 607 (1965).

The word "park," etc.—

"Park" and "leave standing," as used in subsection (a), are synonymous, and neither term includes a mere temporary or momentary stoppage on the highway for a necessary purpose when there is no intent to break the continuity of the travel. *Faison v. T & S Trucking Co.*, 266 N.C. 383, 146 S.E.2d 450 (1966).

This section requires that no part of a parked vehicle be left protruding into the traveled portion of the highway when there is ample room and it is practicable to park the entire vehicle off the traveled portion of the highway. *Sharpe v. Hanline*, 265 N.C. 502, 144 S.E.2d 574 (1965).

One stopping an automobile on the highway should use ordinary care to prevent a collision with other vehicles operating thereon. *Saunders v. Warren*, 267 N.C. 735, 149 S.E.2d 19 (1966).

The operator of a standing or parked vehicle which constitutes a source of danger to other users of the highway is generally bound to exercise ordinary or reasonable care to give adequate warning or notice to approaching traffic of the presence of the standing vehicle, and such duty exists irrespective of the reason for stopping the vehicle on the highway. So the driver of the stopped vehicle must take such precautions as would reasonably be calculated to prevent injury, whether by the use of lights, flags, guards, or other practical means, and failing to give such warning may constitute negligence. *Saunders v. Warren*, 267 N.C. 735, 149 S.E.2d 19 (1966).

A motorist stopping on a pronounced**§ 20-161.1. Regulation of night****Hazard against Which Section Directed.**

—This section is directed against the hazard of bright lights on standing vehicles

curve should anticipate that a following motorist will have an obstructed view of the highway ahead. *Saunders v. Warren*, 267 N.C. 735, 149 S.E.2d 19 (1966).

But Obligation to Light Vehicle, etc.—

Whether defendants violated this section has no bearing upon their obligations in respect of lighting equipment and lights imposed by §§ 20-129 and 20-134. *Faison v. T & S Trucking Co.*, 266 N.C. 383, 146 S.E.2d 450 (1966).

The parking of a car on the hard surface, etc.—

In accord with original. See *Sharpe v. Hanline*, 265 N.C. 502, 144 S.E.2d 574 (1965).

Evidence Making Out Prima Facie Case of Actionable Negligence.—Evidence that defendants left a wrecker standing on the highway in such manner that the wrecker, and the cable attached, blocked the entire highway, that the existing circumstances affected visibility of the cable, that no meaningful warning was given that the highway was completely obstructed, and that traffic, to avoid collision, would have to come to a complete stop, makes out a *prima facie* case of actionable negligence on the part of defendants. *Montford v. Gil-bhaar*, 265 N.C. 389, 144 S.E.2d 31 (1965).

Applied in *Coleman v. Burris*, 265 N.C. 404, 144 S.E.2d 241 (1965); *Williams v. Hall*, 1 N.C. App. 508, 162 S.E.2d 84 (1968).

Quoted in *Lienthall v. Glass*, 2 N.C. App. 65, 162 S.E.2d 596 (1968).

Stated in *Puryear v. Cooper*, 2 N.C. App. 517, 163 S.E.2d 299 (1968).

parking on highways.

facing oncoming traffic at night. *Lienthall v. Glass*, 2 N.C. App. 65, 162 S.E.2d 596 (1968).

§ 20-162.2. Removal of unauthorized vehicles from private lots.—
(a) It shall be unlawful for any person other than the owner or lessee of a privately owned or leased parking space to park a motor or other vehicle in such private parking space without the express permission of the owner or lessee of such space; provided, that such private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner; a vehicle parked in a privately owned parking space in violation of this section may be removed from such space upon the written request of the parking space owner or lessee to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such lot pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid space to place of storage.

(b) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than ten dollars (\$10.00) in the discretion of the court.

(c) This section shall apply only to the counties of Craven, New Hanover, Orange, Robeson, Wake, Wilson. (1969, cc. 173, 288.)

Editor's Note.—Session Laws 1969, c. 288, added Wilson to the list of counties.

§ 20-163. Motor vehicle left unattended; brakes to be set and engine stopped.

Violation of this section, etc.—

The violation of this section and other safety statutes is negligence per se, unless

the statute expressly provides otherwise. *McCall v. Dixie Cartage & Warehousing, Inc.*, 272 N.C. 190, 158 S.E.2d 72 (1967).

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(b) The driver of any vehicle involved in an accident or collision resulting in damage to property and in which there is not involved injury or death of any person shall immediately stop his vehicle at the scene of the accident or collision and shall give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision; provided, if the driver or other occupants of the other vehicle or vehicles involved in the accident or collision or the person or persons whose property is damaged in the accident or collision are not known, the driver shall furnish the information required by this subsection to the nearest available peace officer. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and fined or imprisoned for a period of not more than two years, or both, in the discretion of the court.

(1967, c. 445.)

Editor's Note.—

The 1967 amendment inserted "for a period of not more than two years" in the last sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

For note on North Carolina's "Good Samaritan" statute, see 44 N.C.L. Rev. 508 (1966).

Driver Must Stop at Scene, etc.—

This section requires the driver of a vehicle, involved in an accident or collision resulting in injury or death to any person, to stop, render reasonable assistance and give certain specified information to the occupant or driver of the vehicle collided with. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Knowledge of Accident, etc.—

Knowledge by a motorist that he had

struck a pedestrian is an essential element of the offense of failing to stop and give such pedestrian aid. *State v. Glover*, 270 N.C. 319, 154 S.E.2d 305 (1967).

Section does not require statement by driver as to how he was driving or what caused the collision. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Evidence held sufficient to support charge of failing to stop an automobile after an accident resulting in death of a person. *State v. Massey*, 271 N.C. 555, 157 S.E.2d 150 (1967).

Applied in *State v. Harrelson*, 265 N.C. 589, 144 S.E.2d 650 (1965); *State v. Mohrmann*, 265 N.C. 594, 144 S.E.2d 645 (1965); *State v. Moses*, 272 N.C. 509, 158 S.E.2d 617 (1968).

v. *Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Requirements of Section.—This section requires the driver of any vehicle involved

§ 20-166.1. Reports and investigations required in event of collision.

Section Imposes Duties on Driver, Not Owner.—The duties imposed by this section are duties which the law imposes upon the driver, not upon the owner. *Branch*

v. *Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

Requirements of Section.—This section requires the driver of any vehicle involved

in a collision, resulting in injury or death of any person, to give notice of the collision to police officers and within twenty-four hours to make a written report to the Department of Motor Vehicles upon a form supplied by it. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

No Statement Required.—This section contains no provision requiring a driver involved in a collision which must be reported to make any statement to the officer. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

§ 20-169. Powers of local authorities.

Cited in *Rogers v. Rogers*, 2 N.C. App. 668, 163 S.E.2d 645 (1968).

§ 20-171. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.

The requirement that a person entering a public highway from a private road or drive must yield the right-of-way to vehicles on the public highway applies to a

Duty Imposed by Subsection (e).—Subsection (e) of this section makes it the duty of the State Highway Patrol to investigate all collisions required to be reported to it by this section, and requires the investigating officer to make his report in writing to the Motor Vehicle Department, which report is open to inspection by the public. *Branch v. Dempsey*, 265 N.C. 733, 145 S.E.2d 395 (1965).

person riding an animal as well as to a person driving a motor vehicle. *Watson v. Stallings*, 270 N.C. 187, 154 S.E.2d 308 (1967).

Part 11. Pedestrians' Rights and Duties.

§ 20-173. Pedestrians' right-of-way at crosswalks.

The term "unmarked crosswalk at an intersection," as used in subsection (a) of this section and § 20-174 (a) means that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection. *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968); *Bowen v. Gardner*, 3 N.C. App. 529, 165 S.E.2d 545 (1969).

Duty of Motorist to Yield Right-of-Way.—It is the duty of a motorist to yield the right-of-way to a pedestrian in an unmarked crosswalk at an intersection. *Bowen v. Gardner*, 3 N.C. App. 529, 165 S.E.2d 545 (1969).

Duty of Pedestrian to Yield Right-of-Way.—If the pedestrian elects to cross a street or a highway at a place which is not a marked crosswalk and not an unmarked crosswalk at an intersection, subsection (a) of this section and § 20-174 (a) require that he yield the right-of-way to vehicles. *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

Subsection (a) and § 20-174 (a) do not prohibit pedestrians from crossing streets or highways at places other than marked crosswalks or unmarked crosswalks at intersections. *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

§ 20-174. Crossing at other than

The term "unmarked crosswalk at an intersection," as used in § 20-173 (a) and subsection (a) of this section means that area within an intersection which also lies within the lateral boundaries of a sidewalk projected across the intersection. *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968); *Bowen v. Gardner*, 3 N.C. App. 529, 165 S.E.2d 545 (1969).

Subsection (a) and § 20-173 (a) do not prohibit pedestrians from crossing streets or highways at places other than marked crosswalks or unmarked crosswalks at intersections. *Anderson v. Carter*, 272 N.C.

crosswalks.

426, 158 S.E.2d 607 (1968).

Duty of Motorist.—A motorist must operate his vehicle at a reasonable rate of speed, keep a lookout for persons on or near the highway, decrease his speed when any special hazard exists with respect to pedestrians, and, if circumstances warrant, he must give warning of his approach by sounding his horn. *Morris v. Minix*, 4 N.C. App. 634, 167 S.E.2d 494 (1969).

A driver must make certain that pedestrians in front of him are aware of his approach. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

Duty of Pedestrian, etc.—

In accord with 1st paragraph in original. See *Grisanti v. United States*, 284 F. Supp. 308 (E.D.N.C. 1968).

Where intestate was crossing the street diagonally within the block, at a point which was neither at an intersection nor within a marked crosswalk, and the evidence disclosed no traffic control signals at the adjacent intersections, under the provisions of subsection (a) it was intestate's duty to "yield the right-of-way to all vehicles upon the roadway." *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

If the pedestrian elects to cross a street or a highway at a place which is not a marked crosswalk and not an unmarked crosswalk at an intersection, § 20-173 (a) and subsection (a) of this section require that he yield the right-of-way to vehicles. *Anderson v. Carter*, 272 N.C. 426, 158 S.E.2d 607 (1968).

The failure of a pedestrian, etc.—

In accord with 3rd paragraph in original. See *Price v. Miller*, 271 N.C. 690, 157 S.E.2d 347 (1967).

In accord with 4th paragraph in original. See *Price v. Miller*, 271 N.C. 690, 157 S.E.2d 347 (1967).

The mere fact that a pedestrian attempts to cross a street at a point other than a crosswalk is not sufficient, standing alone, to support a finding of contributory negligence as a matter of law. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

Evidence tending to show that intestate failed to yield the right-of-way as required by subsection (a) may not be treated as amounting to contributory negligence as a matter of law, particularly so in view of testimony to the effect that intestate at the time he was struck had reached a point about ten feet from the west curb of the street. Failure so to yield the right-of-way is not contributory negligence *per se*, but rather it is evidence of negligence to be considered with other evidence in the case in determining whether the actor is chargeable with negligence which proximately caused or contributed to his injury. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

Duty to Avoid Striking Pedestrian, etc.—

In accord with 2nd paragraph in original. See *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

Warning Should Be Given Pedestrians.—

While a driver of a motor vehicle is not required to anticipate that a pedestrian

seen in a place of safety will leave it and get in the danger zone until some demonstration or movement on his part reasonably indicates that fact, he must give warning to one on the highway or in close proximity to it, and not on a sidewalk, who is apparently oblivious of the approach of the car or one whom the driver in the exercise of ordinary care may reasonably anticipate will come into his way. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

It is a driver's duty to sound his horn in order that a pedestrian unaware of his approach may have timely warning. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

If it appears that the pedestrian is oblivious of the movement or the nearness of the car and of the speed at which it is approaching, ordinary care requires the driver to blow his horn, slow down, and, if necessary, stop to avoid inflicting injury. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

The doctrine of last clear chance is the humane rule of law that imposes upon a person the duty to exercise ordinary or due care to avoid injury to another who has negligently placed himself in a situation of danger, and who he can reasonably apprehend is unconscious thereof or is unable to avoid the danger. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

If liability is to be imposed, the defendant must have the last clear chance to avoid the injury. Without the showing of an opportunity, the doctrine of last clear chance cannot be invoked in North Carolina; the doctrine cannot be applied if the contributory negligence of the plaintiff continued up to the moment of the accident which caused the injury. *Grisanti v. United States*, 284 F. Supp. 308 (E.D.N.C. 1968).

Contributory negligence of plaintiff does not preclude recovery where it is made to appear that the defendant, by exercising reasonable care and prudence, might have avoided the injurious consequences to the plaintiff, notwithstanding plaintiff's negligence. *Wanner v. Alsup*, 265 N.C. 308, 144 S.E.2d 18 (1965).

Applied in *Jones v. Smith* 3 N.C. App. 396, 165 S.E.2d 56 (1969); *Swain v. Williamson*, 4 N.C. App. 622, 167 S.E.2d 491 (1969).

Cited in *Webb v. Felton*, 266 N.C. 707, 147 S.E.2d 219 (1966).

§ 20-174.1. Sitting or lying upon highways or streets prohibited.

(b) Any person convicted of violating this section shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment not exceeding six months, or both, in the discretion of the court. (1965, c. 137; 1969, c. 1012.)

Editor's Note. — The 1969 amendment rewrote subsection (b). Lemis in southern desegregation, see 43 N.C.L. Rev. 689 (1965).

As subsection (a) was not changed by the amendment, it is not set out.

For article dealing with the legal prob-

lems in southern desegregation, see 43 N.C.L. Rev. 689 (1965).

Applied in *In re Burrus*, 4 N.C. App. 523, 167 S.E.2d 454 (1969).

Part 12. Penalties.

§ 20-176. Penalty for misdemeanor.

(b) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment: Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plates issued therefor; permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of §§ 20-116, 20-117, 20-122, 20-122.1, 20-123, 20-124, 20-125, 20-126, 20-127, 20-128, 20-129, 20-130, 20-131, 20-132, 20-133, 20-134, 20-140.2, 20-142, 20-143, 20-144, 20-146, 20-147, 20-148, 20-150, 20-151, 20-152, 20-153, 20-154, 20-155, 20-156, 20-157, 20-159, 20-160, 20-161, 20-162, 20-163, 20-165—the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 378, s. 3.)

Editor's Note. —

The 1967 amendment, effective Jan. 1, 1968, inserted the reference to § 20-140.2 in the proviso to subsection (b).

The 1969 amendment inserted the reference to § 20-122.1 in subsection (b).

As subsection (a) was not changed by the amendments, it is not set out.

The maximum punishment for a violation of § 20-63 or 20-111 would be that prescribed by subsection (b) of this section, namely, a fine of not more than one hundred dollars or imprisonment in the county or municipal jail for not more than

sixty days, or both such fine and imprisonment. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

Every person convicted of speeding in violation of § 20-141, where the speed is not in excess of eighty miles per hour, shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

Applied in *State v. Massey*, 265 N.C. 579, 144 S.E.2d 649 (1965).

§ 20-179. Penalty for driving while under the influence of intoxicating liquor or narcotic drugs; limited driving permits for first offenders. —(a) Every person who is convicted of violating § 20-138, relating to habitual users of narcotic drugs or driving while under the influence of intoxicating liquor or narcotic drugs, shall, for the first offense, be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or imprisonment for not less than thirty (30) days, nor more than six months, or by both such fine and imprisonment, in the discretion of the court. For a second conviction of the same offense, the defendant shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or imprisonment for not less than two months, nor more than six months, or by both such fine and imprisonment, in the discretion of the court. For a third or subsequent conviction of the same offense, the defendant shall be

punished by a fine of not less than five hundred dollars (\$500.00) or by both such fine and imprisonment in the discretion of the court not to exceed two years.

(b) (1) Upon a first conviction only, the trial judge may when feasible as a condition of a suspended sentence, allow a limited driving privilege or license to the person convicted for proper purposes reasonably connected with the health, education and welfare of the person convicted and his family. The judge may impose upon such limited driving privilege any restrictions as in his discretion are deemed advisable including, but not limited to, conditions of days, hours, types of vehicles, routes, geographical boundaries and specific purposes for which limited driving privilege is allowed. Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical as that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Department of Motor Vehicles along with any operator's or chauffeur's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license, by their nature, rendered inapplicable.

(2) The judgment issued by the trial judge as herein permitted shall as near as practical be in form and contents as follows:

STATE OF NORTH CAROLINA } In the General Court of Justice
COUNTY OF } RESTRICTED DRIVING
PRIVILEGES

This cause coming on to be heard and being heard before the Honorable, Judge presiding, and it appearing to the Court that the defendant,, has been convicted of the offense of operating a motor vehicle while under the influence of intoxicating beverages, and it further appearing to the Court that the defendant should be issued a restrictive driving license and is entitled to the issuance of a restrictive driving privilege under and by the authority of General Statutes 20-179 (b);

Now, therefore, it is ordered, adjudged and decreed that the defendant be allowed to operate a motor vehicle under the following conditions and under no other circumstances.

Name:
 Race: Sex:
 Height: Weight:
 Color of Hair: Color of Eyes:
 Birth Date:
 Driver's License Number:
 Signature of Licensee:
 Conditions of Restriction (Indicate if none)

Type of Vehicle:
 Geographic Restrictions:
 Hours of Restriction:
 Other Restrictions:

This limited license shall be effective from to

..... subject to further orders as the Court in its discretion may deem necessary and proper.

This the day of 1969.

.....
Judge Presiding

- (3) Upon conviction of such offense outside the jurisdiction of this State the person so convicted may apply to the resident judge of the superior court of the district in which he resides for limited driving privileges hereinbefore defined. Upon such application the judge shall have the authority to issue such limited driving privileges in the same manner as if he were the trial judge.
- (4) Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license have been suspended and revoked as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge.
- (5) This action is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5.)

Editor's Note.—The 1967 amendment added "not to exceed two years" at the end of subsection (a).

The first 1969 amendment added "nor more than five hundred dollars (\$500.00)" and "nor more than six months" in the first sentence, added "nor more than five hundred dollars (\$500.00)" in the second sentence, substituted "two" for "six" preceding "months" in that sentence and added therein "nor more than six months."

The second 1969 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

Session Laws 1969, c. 1283, s. 6, provides: "This act shall become effective upon its ratification, and shall expire at midnight on June 30, 1971; provided, that the expiration of this act shall not affect the orders or judgments of any court rendered during the effective period of this act."

Opinions of Attorney General.—Representative G. Hunter Warlick, Hickory, 7/17/69; Commissioner Joe W. Garrett, Department of Motor Vehicles, 9/18/69; Mr. John B. Whitley, District Prosecutor, Twenty-sixth Judicial District, 10/2/69; Mr. Robert C. Powell, Attorney at Law, 10/8/69; Honorable Walter W. Cohoon,

Resident Judge, First Judicial District, 10/16/69; Mr. W. E. Crosswhite, Solicitor, Statesville Recorder's Court, 10/21/69.

Amendment of Warrant.—The trial court has discretionary power to permit the amendment of a warrant charging defendant with operating a motor vehicle upon a public highway while under the influence of intoxicating liquor, so as to charge that the offense was a third offense, since the amendment does not change the nature of the offense but relates solely to punishment. *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

Two Years' Imprisonment, etc.—

In accord with original. See *State v. Morris*, 275 N.C. 50, 165 S.E.2d 245 (1969).

The offense condemned by § 20-138 is a general misdemeanor for which an offender, for the first offense, may be imprisoned for two years in the discretion of the court. *State v. Morris*, 275 N.C. 50, 165 S.E.2d 245 (1969).

Sentence Not Excessive.—

Under this section a maximum sentence of two years may be imposed, and therefore a sentence of six months in prison is not excessive. *State v. Grant*, 3 N.C. App. 586, 165 S.E.2d 505 (1969).

§ 20-180. Penalty for speeding.

Every person convicted of speeding in violation of § 20-141, where the speed is not in excess of eighty miles per hour, shall be punished by a fine of not more than one hundred dollars (\$100.00) or by

imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment. *State v. Tolley*, 271 N.C. 459, 156 S.E.2d 858 (1967).

§ 20-182. Penalty for failure to stop in event of accident involving injury or death to a person.

Cited in *State v. Massey*, 271 N.C. 555, 157 S.E.2d 150 (1967).

ARTICLE 3A.

Motor Vehicle Law of 1947.

Part 2. Safety Equipment Inspection of Motor Vehicles.

§ 20-183.2. Safety equipment inspection required; inspection certificate; one-way permit to move vehicle to inspection station.— (a) Every motor vehicle, trailer, semitrailer, and pole trailer not including trailers of a gross weight of less than 4000 pounds and house trailers, registered or required to be registered in North Carolina when operated on the streets and highways of this State must display a current approved inspection certificate at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with this part. Such motor vehicle shall thereafter be inspected and display a current inspection certificate as is required by subsection (b) hereof.

(b) Every inspection certificate issued under this part shall be valid for not less than 12 months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any motor vehicle on the highway until there is displayed thereon a current inspection certificate as provided by this part, indicating that the vehicle has been inspected within the previous 12 months and has been found to comply with the standard for safety equipment prescribed by this chapter subject to the following provisions:

- (1) Vehicles of a type required to be inspected under subsection (a), which are owned by a resident of this State, that have been outside of North Carolina continuously for a period of 30 days, or more, immediately preceding the expiration of the then current inspection certificate shall within 10 days of reentry to the State be inspected and have an approved certificate attached thereto if vehicle is to continue operation on the streets and highways.
- (2) Any vehicle owned or possessed by a dealer, manufacturer or transporter within this State and operated over the public streets and highways displaying thereon a dealer demonstration, manufacturer or transporter plate must have affixed to the windshield thereof a valid certificate of inspection and approval, except a dealer, manufacturer or transporter or his agent may operate a motor vehicle displaying dealer demonstration, manufacturer or transporter plates from source of purchase to his place of business or to an inspection station, provided it is within 10 days of purchase, foreclosure or repossession.
- (3) Vehicles acquired by residents of this State from dealers or owners located outside of the State must, upon entry to this State, be inspected and approved, certificate attached, within 10 days after the vehicle becomes subject to registration.
- (4) Vehicles acquired by residents within this State, not displaying current North Carolina inspection certificates, must be inspected and have approved inspection certificate attached within 10 days from date registration plate issued or if registration plate is to be transferred, within 10 days of the date of purchase.
- (5) Owners of motor vehicles moving their residence to North Carolina from other states must within 10 days from the date the vehicles are subject to registration have same inspected and have an approved certificate attached thereto.

(6) The Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant special written one-way permits to operate motor vehicles without current inspection certificates solely for the purpose of moving such vehicles to an authorized inspection station to obtain the inspection required under this part.

(c) On and after February 16, 1966 all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station as required by this part. Provided, however, a purchaser of a motor vehicle, who is licensed as a self-inspector, may conduct the required inspection, after entering into a written agreement with the dealer to follow such a procedure. A copy of such dealer-purchaser agreement must be filed with the Department of Motor Vehicles. Provided further, that any new and unregistered vehicle sold to a nonresident (as defined in G.S. 20-6) shall be exempt from the requirements of this section if such vehicle is not required to be registered in this State.

(d) When a motor vehicle required to be inspected under this part shall, upon inspection, fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection, shall issue an authorized receipt for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator may have such defects corrected at such place as he or she chooses. The vehicle may be reinspected at the safety equipment inspection station, first making the inspection, without additional charge, or the owner or operator may have same inspected at another safety equipment station upon payment of a new inspection fee. (1965, c. 734, s. 1; 1967, c. 692, s. 1; 1969, c. 179, s. 2; cc. 219, 386.)

Editor's Note.—

The 1967 amendment rewrote this section.

The first 1969 amendment added subdivision (6) at the end of subsection (b).

The second 1969 amendment added the last three sentences of subsection (c).

The third 1969 amendment, effective July 1, 1969, substituted "less than 4000 pounds" for "2500 pounds or less" near the beginning of subsection (a).

Cited in State v. White, 3 N.C. App. 31, 164 S.E.2d 36 (1968).

§ 20-183.3. Inspection requirements. — Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety inspection equipment station, and if required by chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment:

- (1) Brakes
- (2) Lights
- (3) Horn
- (4) Steering mechanism
- (5) Windshield wiper
- (6) Directional signals
- (7) Tires.

The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment. (1965, c. 734, s. 1; 1969, c. 378, s. 2.)

Editor's Note. — The 1969 amendment added "(7) Tires."

§ 20-183.4. Licensing of safety equipment inspection stations. — Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

- (1) Be of good character and have a good reputation for honesty.

- (2) Have adequate knowledge of the equipment requirements of the Motor Vehicle Laws of North Carolina.
- (3) Be able to satisfactorily conduct the mechanical inspection required by this part.
- (4) Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.
- (5) Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.

Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if, in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until cancelled by request of licensee or until revoked or suspended by the Commissioner. Any licensee whose license has been revoked or suspended or any applicant whose application has been refused, may, within 10 days from the notice of such revocation, suspension or refusal, request a hearing before the Commissioner and, in such cases, the hearing shall be conducted within 10 days of receipt of request for such hearing. The Commissioner, following such hearing, may rescind the order of suspension, revocation or the refusal to issue license, or he may affirm the previous order of revocation, suspension or refusal. Any applicant or licensee aggrieved by the decision of the Commissioner may, following such decision, file a petition in the Superior Court of Wake County or in the county wherein applicant or licensee resides. Such petition shall recite the fact that the administrative remedy, as provided above, has been exhausted. Provided, that no restraining order shall issue against the Department of Motor Vehicles under this section until and unless the Department shall have had at least five days' notice of the petitioner's intention to seek such restraining order.

The Commissioner may designate the State or any political subdivision thereof or any person, firm or corporation as self inspectors for the sole purpose of inspecting vehicles owned or operated by such agencies, persons, firms, or corporations so designated. (1965, c. 734, s. 1; 1967, c. 692, s. 2.)

Editor's Note.—The 1967 amendment rewrote the portion of the second paragraph that follows the second sentence.

§ 20-183.7. Fees to be charged by safety equipment inspection station.—Every inspection station, except self inspectors as designated herein, shall charge a fee of two dollars (\$2.00) for inspecting a motor vehicle to determine compliance with this article and shall give the operator a receipt indicating the articles and equipment approved and disapproved; provided, that inspection stations approved by the Commissioner, and operated under rules, regulations and supervision of any governmental agency, when inspecting vehicles required to be inspected by such agencies' rules and regulations and by the provisions of this part, may, upon approval by such inspection station and the payment of a fee of twenty-five cents (25¢), attach to the vehicle inspected a North Carolina inspection certificate as required by this part. When the receipt is presented to the inspection station which issued it, at any time within ninety days, that inspection station shall reinspect the motor vehicle free of additional charge until approved. When said vehicle is approved, and upon payment to the inspection station of the fee, the inspection station shall affix a valid inspection certificate to said motor vehicle, and said inspection station shall maintain a record of the motor vehicles inspected which shall be available for eighteen months. The Department of Motor Vehicles shall receive twenty-five cents (25¢) for each inspection certificate and these pro-

ceeds shall be placed in a fund designated the "Motor Vehicle Safety Equipment Inspection Fund," to be used under the direction and supervision of the Director of the Budget for the administration of this article. (1965, c. 734, s. 1; 1969, c. 1242.)

Editor's Note.—The 1969 amendment, effective July 15, 1969, increased the inspection fee in the first sentence from one dollar and fifty cents to two dollars.

§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful safety inspection certificate; thirty-day grace period for expired inspection certificates.

(b) The Commissioner of Motor Vehicles is authorized to enter into agreements or arrangements with the duly authorized representatives of other jurisdictions whereby the safety equipment inspection required under this article may be waived with respect to vehicles which have undergone substantially similar safety equipment inspections in such other jurisdictions and for which valid inspection certificates have been issued by such other jurisdictions. Such agreements or arrangements shall provide that vehicles inspected in this State and for which valid inspection certificates have been issued shall be accorded a similar privilege when subject to the laws of such other jurisdictions. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and citizens thereof; and all of the same shall be determined upon the basis and recognition of the benefits which accrue to the citizens of this State by reason of the agreement or arrangement.

(c) Violation of any provision of this article shall, upon conviction, be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed thirty days, except that the unauthorized reproduction of an inspection certificate shall be punishable as a forgery under G.S. 14-119.

(d) No person shall display or cause to be displayed or permit to be displayed upon any motor vehicle any safety inspection certificate, knowing the same to be fictitious or to be issued for another motor vehicle or to be issued without inspection and approval having been made. The Department is hereby authorized to take immediate possession of any safety inspection certificate which is fictitious or which has been otherwise unlawfully or erroneously issued or which has been unlawfully used. Any person violating the provisions of this subsection shall be guilty of a misdemeanor punishable by fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed 30 days.

(e) No person shall be convicted of failing to display current inspection certificate as provided under this article if he produces in court at the time of his trial a receipt from a licensed motor vehicle inspection station showing that a valid inspection certificate was issued for the vehicle involved within thirty (30) days after expiration of the previous inspection certificate issued for the vehicle. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620.)

Editor's Note.—The 1967 amendment added subsection (d).

The first 1969 amendment added subsection (e).

The second 1969 amendment inserted

present subsection (b) and designated former subsections (b) and (c) as (c) and (d).

As subsection (a) was not changed by the amendments, it is not set out.

ARTICLE 4.

State Highway Patrol.

§ 20-187.1. Awards.—(a) The patrol commander shall appoint an awards committee consisting of one troop commander, one troop executive officer, one district sergeant, one corporal, two troopers and one member of patrol headquarters staff. All committee members shall serve for a term of one year. The mem-

ber from patrol headquarters staff shall serve as secretary to the committee and shall vote only in case of ties. The committee shall meet at such times and places designated by the patrol commander.

(b) Awards to be granted under the provisions of this section shall consist of the following:

- (1) North Carolina State Highway Patrol Award of Honor. The North Carolina State Highway Patrol award of honor is awarded in the name of the people of North Carolina and by the Governor to a person who, while a member of the North Carolina State Highway Patrol, distinguishes himself conspicuously by gallantry and intrepidity at the risk of personal safety and beyond the call of duty while engaged in the preservation of life and property. The deed performed must have been one of personal bravery and self-sacrifice so conspicuous as to clearly distinguish the individual above his colleagues and must have involved risk of life. Incontestable proof of the performance of the service will be required and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit.
- (2) North Carolina State Highway Patrol Award for Valor. The North Carolina State Highway Patrol award for valor is awarded in the name of the people of North Carolina and by the Commissioner of Motor Vehicles to a person who, while a member of the North Carolina State Highway Patrol, distinguishes himself by heroic and laudable achievement or service reflecting professional skill, personal valor, and steadfast devotion to duty in keeping with the highest ideals and traditions of the North Carolina State Highway Patrol.
- (3) North Carolina State Highway Patrol Award of Merit. The North Carolina State Highway Patrol award of merit is awarded in the name of the people of North Carolina and by the commanding officer of the Highway Patrol to a person in recognition of and as a reward for exceptionally meritorious service and outstanding ability displayed while performing the duties of the Highway Patrol as defined by this chapter.
- (4) North Carolina State Highway Patrol Award for Distinguished Service. The North Carolina State Highway Patrol award for distinguished service is awarded in the name of the people of North Carolina and by the commanding officer of the Highway Patrol to a person in recognition of and as a reward for extraordinary and outstanding meritorious acts, achievements or services, or for honorable and above satisfactory service for a period of not less than two years, while a member of the North Carolina State Highway Patrol.

(c) Recipients of the awards hereinabove provided for will be entitled to receive a framed certificate of the award and an insignia designed to be worn as a part of the State Highway Patrol uniform.

(d) The awards committee shall review and investigate all reports of outstanding service and shall make recommendations to the patrol commander with respect thereto. The committee shall consider members of the Patrol for the awards created by this section when properly recommended by any individual having personal knowledge of an act, achievement or service believed to warrant the award of a decoration. No recommendation shall be made except by majority vote of all members of the committee. All recommendations of the committee shall be in writing and shall be forwarded to the patrol commander.

(e) Upon receipt of a recommendation of the committee, the patrol commander shall inquire into the facts of the matter and shall reduce his recommendation to writing. The patrol commander shall forward his recommendation, together with the recommendation of the committee, to the Commissioner of Motor Vehicles. The Commissioner shall have final authority to approve or disapprove recommendations affecting the issuance of all awards except the award of honor.

All recommendations for the award of honor shall be forwarded to the Governor for final approval or disapproval.

(f) The patrol commander shall, with the approval of the Commissioner, establish all necessary rules and regulations to fully implement the provisions of this section and such rules and regulations shall include, but shall not be limited to, the following:

- (1) Announcement of awards
- (2) Presentation of awards
- (3) Recording of awards
- (4) Replacement of awards
- (5) Authority to wear award insignias. (1967, c. 1179.)

§ 20-188. Duties of Highway Patrol.

Arrest without Warrant. — A highway patrolman apprehending a person driving a motor vehicle on the public highway while under the influence of intoxicating liquor is authorized, by virtue of the provisions of this section and subdivision (1) of § 15-41, to arrest such person without a warrant, and such arrest is legal. *State v. Broome*, 269 N.C. 661, 153 S.E.2d 384 (1967).

§ 20-196.2. Use of airplanes to discover violations of §§ 20-138 to 20-171; testimony of pilots and observers; declaration of policy. — The State Highway Patrol is hereby permitted the use of airplanes to discover violations of part 10 of article 3 of chapter 20 of the General Statutes relating to operation of motor vehicles and rules of the road; provided, however, neither the observer nor the pilot shall be competent to testify in any court of law in a criminal action charging violations of G.S. 20-141, 20-141.1, and 20-144. It is hereby declared the public policy of North Carolina that the airplanes should be used primarily for accident prevention and should also be used incident to the issuance of warning citations in accordance with the provisions of G.S. 20-183. (1967, c. 513.)

ARTICLE 7

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-216. Passing horses or other draft animals. — Any person operating a motor vehicle shall use reasonable care when approaching or passing a horse or other draft animal whether ridden or otherwise under control. (1917, c. 140, s. 15; C. S., s. 2616; 1969, c. 401.)

Editor's Note. — The 1969 amendment rewrote this section.

§ 20-217. Motor vehicles to stop for school, church and Sunday school busses in certain instances. — Every person using, operating, or driving a motor vehicle upon the roads and highways of this State or upon any street of any town or city in this State, upon approaching from any direction on the same road, highway or street any school bus or any privately owned bus transporting children to and from any school, church, or Sunday school, while such bus is stopped and engaged in receiving or discharging passengers therefrom upon the roads or highways of the State or upon any of the streets of cities and towns of the State, or at any time while such bus is displaying its mechanical stop signal, shall bring his motor vehicle to a full stop before passing or attempting to pass such bus and shall remain stopped until the mechanical stop signal of the bus has been withdrawn or until such bus has moved on; except, that the driver of a vehicle upon any road, highway or street which has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space or by a physical barrier, need not stop upon meeting or passing any such bus which has stopped in the roadway across such dividing space or physical barrier. No operator of a school, church or Sunday school bus shall use the mechani-

cal stop signal installed on such bus except for the purpose of indicating that such bus has stopped or is about to stop for the purpose of receiving or discharging passengers.

The provisions of this section are applicable only in the event the school, church, privately owned bus or Sunday school bus bears upon the front and rear thereof a plainly visible sign containing the words "school bus" or the words "church bus" or "Sunday school bus" in letters not less than five inches in height.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars (\$50.00) or imprisoned not to exceed thirty days. (1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370; 1969, c. 952.)

Editor's Note.—

The 1969 amendment rewrote the first sentence.

This section is a safety statute, designed for the protection of life, limb and property. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

Culpable Negligence.—The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is wilful, wanton, or intentional. But where there is an unintentional

or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Weston, 273 N.C. 275, 159 S.E.2d 883 (1968).

§ 20-218.1. Private and parochial school buses.—The term "school bus" as used in this chapter shall include public, private, and parochial school buses, and the term "school activity bus" as used in this chapter shall include public, private, and parochial school activity buses. (1969, c. 264.)

Editor's Note. — Session Laws 1969, c. 264, adding this section, is effective Jan. 1, 1970.

§ 20-218.2. Speed limit for activity buses for nonprofit purpose.—It shall be unlawful for any person to operate an activity bus for a nonprofit organization for a nonprofit purpose which is being used for transportation of persons in connection with nonprofit activities in excess of 45 miles per hour.

Any person violating this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty days. (1969, c. 1000, s. 2.)

§ 20-219.1. Parked or abandoned vehicles removed from public highways.—Any motor vehicle left parked and unattended, or abandoned, on any public highway or right-of-way thereof, for a period of forty-eight hours shall, at the direction of any full-time law-enforcement officer, be towed to a place of safety and storage. (1967, c. 1158.)

Opinions of Attorney General. — Mr. F.L. Hutchinson, Division Engineer, State Highway Commission, 7/24/69.

ARTICLE 8.

Habitual Offenders.

§ 20-220. Declaration of policy.—It is hereby declared to be the policy of North Carolina :

- (1) To provide maximum safety for all persons who travel or otherwise use the public highways of this State; and
- (2) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their in-

difference to the safety and welfare of others and their disrespect for the laws of this State, the orders of its courts, and the statutorily required acts of its administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of this State and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of the traffic laws. (1969, c. 867.)

Editor's Note.—Former article 8, relating to sale of used motor vehicles brought into the State and containing §§ 20-220 to 20-223, was repealed by Session Laws 1945, c. 635. Former §§ 20-224 to 20-231,

which were contained in former article 9, the Motor Vehicle Safety and Financial Responsibility Act, were repealed by Session Laws 1953, c. 1300, s. 35.

§ 20-221. Habitual offender defined.—An habitual offender shall be any person, resident or nonresident, whose record, as maintained in the office of the Department of Motor Vehicles, shows that such person has accumulated the convictions for separate and distinct offenses described in subdivisions (1), (2), or (3), of this section, committed after June 19, 1969 and within a seven-year period, provided, that where multiple convictions result from a series of offenses committed within a six-hour period, only one conviction shall be recorded for the purposes of this article, as follows:

- (1) Three or more convictions arising from separate acts of any one or more of the following offenses, either singularly or in combination:
 - a. Voluntary and involuntary manslaughter resulting from the operation of a motor vehicle;
 - b. Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug;
 - c. Driving a motor vehicle while operator's or chauffeur's license is suspended or revoked;
 - d. Any offense punishable as a felony under the motor vehicle laws of North Carolina or any felony in the commission of which a motor vehicle is used;
 - e. Failure to stop and render aid as required under the laws of this State in the event of a motor vehicle accident;
 - f. Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of one hundred dollars (\$100.00) to stop close to the scene of such accident and report his identity or otherwise report such accident in violation of law.
 - g. Any motor vehicle moving violation committed during a period of suspension or revocation.
- (2) Twelve or more convictions of any separate and distinct offenses in the operation of a motor vehicle which are required to be reported to the Department of Motor Vehicles and the conviction whereof authorizes or requires the Department of Motor Vehicles to suspend or revoke the privilege to operate motor vehicles on the highways of this State for a period of thirty days or more and such convictions shall include those offenses enumerated in subdivision (1) above when taken with and added to those offenses described herein.
- (3) The offenses included in subdivisions (1) and (2) hereof shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the State's statutory provisions concerning such offenses and all changes in or amendments thereto and any federal law, any law of another state or any valid town, city or county ordinance of another state substantially conforming to the aforesaid State's statutory provisions.

(4) For the purpose of this article, the term "conviction" shall mean a final conviction. Also for the purposes of this article a forfeiture of bail or collateral deposited to secure a defendant's appearance in court in North Carolina, which forfeiture has not been vacated, shall be equivalent to a conviction. (1969, c. 867.)

§ 20-222. Commissioner to certify record to superior court.—The Commissioner of Motor Vehicles shall certify, substantially in the manner provided for in G.S. 20-42 (b) three abstracts of the conviction record as maintained in his office of any person whose record appears to bring him within the definition of an habitual offender, as defined in G.S. 20-221, to the superior court solicitor of the judicial district in which such person resides according to the records of the Department of Motor Vehicles or to the superior court solicitor for the county of Wake if such person is not a resident of this State. Such abstract may be admitted as evidence as provided in G.S. 20-42 (b). Such abstract shall be competent evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such abstract. (1969, c. 867.)

§ 20-223. Solicitor to initiate court proceeding, petition.—The solicitor, upon receiving the aforesaid abstract from the Commissioner, shall forthwith file a petition against the person named therein in the superior court division of the county wherein such person resides or, in the case of a nonresident, in the Superior Court Division of Wake County. The petition shall request the court to determine whether or not the person named therein is an habitual offender. (1969, c. 867.)

§ 20-224. Service of petition, order to show cause.—Upon the filing of the petition, any superior court judge having jurisdiction over criminal cases within the county shall enter an order incorporating by attachment the aforesaid abstract and directed to the person named therein to appear at the next criminal session of the court and show cause why he should not be barred from operating a motor vehicle on the highways of this State. A copy of the petition, the show cause order and the abstract shall be served upon the person named therein in the manner prescribed by law for the service of process. Service thereof on any nonresident of this State may be made in the same manner as in any action or proceeding arising out of a collision on the highways in this State in the manner provided in G.S. 1-105 which is hereby made applicable to these proceedings except that any fee for such service shall be taxed against the person named in the petition as a part of the cost of such proceeding. (1969, c. 867.)

Editor's Note.—General Statutes 1-105, Session Laws 1967, c. 954, s. 4, effective referred to in this section, is repealed by Jan. 1, 1970.

§ 20-225. Hearing, procedure.—The matter shall be heard at the criminal session of the court by the judge without a jury. If such person denies that he was convicted of any offense shown in the abstract and necessary for a holding that he is an habitual offender, and if the court cannot, on the evidence available to it, determine the issue, the court may require of the Department of Motor Vehicles certified copies of such records respecting the matter as it may have in its possession. If, upon an examination of such records, the court is still unable to make such determination, it shall certify the decision of such issue to the court in which such conviction was reportedly made. The court to which such certification is made shall forthwith conduct a hearing to determine such issue and send a certified copy of its final order determining such issue to the court in which the petition was filed. (1969, c. 867.)

§ 20-226. Court's findings, judgment.—If the court finds that such person is not the same person named in the aforesaid abstract, or that he is not an

habitual offender under this article, the proceeding shall be dismissed, but if the court finds that such person is the same person named in the abstract and that such person is an habitual offender, the court shall so find and by appropriate judgment shall direct that such person not operate a motor vehicle on the highways of the State of North Carolina and to surrender to the court all licenses or permits to operate a motor vehicle upon the highways of this State. The clerk of the court shall forthwith transmit a copy of such judgment together with any licenses or permits surrendered to the Department of Motor Vehicles. (1969, c. 867.)

§ 20-227. No new license issued for five years.—No license to operate a motor vehicle in North Carolina shall be issued to an habitual offender,

- (1) For a period of five years from the date of the judgment of the court finding such person to be an habitual offender and
- (2) Until the privilege of such person to operate a motor vehicle in this State has been restored by judgment of the superior court division. (1969, c. 867.)

§ 20-228. Driving after judgment prohibited.—It shall be unlawful for any person to operate any motor vehicle in this State while the judgment of the court prohibiting the operation remains in effect. Any person found to be an habitual offender under the provisions of this article who is thereafter convicted of operating a motor vehicle in this State while the judgment of the court prohibiting such operation is in effect, shall be guilty of a misdemeanor and imprisoned for not less than one year nor more than five years or by fine or imprisonment in the discretion of the court.

For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing such charge shall require the solicitor to determine whether such person has been adjudged an habitual offender and by reason of such judgment is barred from operating a motor vehicle on the highways of this State. If the solicitor determines that the accused has been so held, he shall cause the appropriate criminal charges to be lodged against the accused. (1969, c. 867.)

§ 20-229. Restoration of driving privilege.—At the expiration of five years from the date of any final judgment of the court entered under the provisions of this article finding a person to be an habitual offender and directing him not to operate a motor vehicle in this State, such person may petition the court in which he was found to be an habitual offender, or the superior court division of any county in this State having criminal jurisdiction over the place in which such person then resides, for restoration of his privilege to operate a motor vehicle in this State. Upon such petition, the court shall restore to such person the privilege to operate a motor vehicle in this State. (1969, c. 867.)

§ 20-230. Appeals.—An appeal may be taken from any final action or judgment entered under the provisions of this article in the same manner and form as appeals in civil actions. (1969, c. 867.)

§ 20-231. No existing law modified.—Nothing in this article shall be construed as amending, modifying or repealing any existing law of North Carolina or any existing ordinance of any political subdivision relating to the operation of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; or shall be construed so as to preclude the exercise of the regulatory powers of any division, agency, department or political subdivision of this State having the statutory authority to regulate such operation and licensing. (1969, c. 867.)

ARTICLE 9A.

*Motor Vehicle Safety and Financial Responsibility Act of 1953.***§ 20-279.1. Definitions.**

(11) "Proof of financial responsibility": Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of \$10,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$20,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident.

(1967, c. 277, s. 1.)

Editor's Note.—

The 1967 amendment substituted "\$10,000" for "\$5,000" and "\$20,000" for "\$10,000" in subdivision (11).

As the rest of the section was not changed by the amendment, only subdivision (11) is set out.

Section 10, c. 277, Session Laws 1967, provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

For case law survey as to automobile liability insurance, see 44 N.C.L. Rev. 1023 (1966).

For case law survey as to insurance, see 45 N.C.L. Rev. 955 (1967).

Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967), cited in the note below, was commented on in 46 N.C.L. Rev. 433 (1968).

The object, etc.—

The purpose of the Financial Responsibility Law is to protect victims of automobile accidents. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

This Article and Article 13, etc.—

This article and article 13 of this chapter are to be construed together so as to har-

monize their provisions and to effectuate the purpose of the legislature. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Article 13 Requires Proof of Financial Responsibility to Be Given in Manner Prescribed by This Article.— The Vehicle Financial Responsibility Act of 1957, article 13 of this chapter, requires every owner of a motor vehicle, as a prerequisite to the registration thereof, to show "proof of financial responsibility" in the manner prescribed by this article. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

Construction of Article. — Ambiguous provisions of the Financial Responsibility Law must be construed to accomplish the purpose of such law. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

Contravening Policy Provision Is Void. —A provision in a policy of liability insurance which contravenes the Financial Responsibility Law is void. Allstate Ins. Co. v. Shelby Mut. Ins. Co., 269 N.C. 341, 152 S.E.2d 436 (1967).

Applied in Manning v. State Farm Mut. Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965).

Cited in State v. Anderson, 3 N.C. App. 124, 164 S.E.2d 48 (1968).

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

(c) This section shall not apply under the conditions stated in § 20-279.6 nor:

- (1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;
- (2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;
- (3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Com-

missioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

- (4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor
- (5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355; 1967, c. 277, s. 2.)

Editor's Note. — The 1967 amendment substituted "ten thousand dollars (\$10,000.00)" for "five thousand dollars (\$5,000.00)" and "twenty thousand dollars (\$20,000.00)" for "ten thousand dollars (\$10,000.00)" near the end of subsection (c).

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

Section 10, c. 277, Session Laws 1967,

provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

Applied in *Carson v. Godwin*, 269 N.C. 744, 153 S.E.2d 473 (1967); *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

§ 20-279.10. Custody, disposition and return of security; escheat.
—(a) Security deposited in compliance with the requirements of this article shall be placed by the Commissioner in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subdivision (3) of § 20-279.7, or to the payment in settlement,

agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Commissioner has been filed with him that there has been a release from liability, or a final adjudication of non-liability, or a duly acknowledged agreement, in accordance with subdivision (4) of § 20-279.6, or a settlement accepted by the Commissioner as provided in subdivision (5) of § 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision (6) of § 20-279.6, or whenever, after the expiration of one (1) year from the date of the accident, or from the date of deposit of any security under subdivision (3) of § 20-279.7, whichever is later, the Commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid.

(b) One year from the deposit of any security under the terms of this article, the Commissioner shall notify the depositor thereof by registered mail addressed to his last known address that the depositor is entitled to a refund of the security upon giving reasonable evidence that no action at law for damages arising out of the accident in question is pending or that no judgment rendered in any such action remains unpaid. If, at the end of three years from the date of deposit, no claim therefor has been received, the Department shall notify the depositor thereof by registered mail and shall cause a notice to be posted at the courthouse door of the county in which is located the last known address of the depositor for a period of 60 days. Such notice shall contain the name of the depositor, his last known address, the date, amount and nature of the deposit, and shall state the conditions under which the deposit will be refunded. If, at the end of two years from the date of posting of such notice, no claim for the deposit has been received, the Commissioner shall certify such fact together with the facts of notice to the State Treasurer and the Treasurer shall turn such deposit over to the University of North Carolina as an escheat. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13; 1967, c. 1227.)

Editor's Note. — The 1967 amendment section as subsection (a) and added sub-designated the former provisions of the section (b).

§ 20-279.13. Suspension for nonpayment of judgment; exceptions.

(c) If the judgment creditor consents in writing, in such form as the Commissioner may prescribe, that the judgment debtor be allowed license or non-resident's operating privilege, the same may be allowed by the Commissioner, in his discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in § 20-279.16. (1953, c. 1300, s. 13; 1965, c. 926, s. 1; 1969, c. 186, s. 4.)

Editor's Note. —

The 1969 amendment deleted, at the end of subsection (c), "provided the judgment debtor furnishes proof of financial responsibility."

As only subsection (c) was changed by the amendment, the rest of the section is not set out.

§ 20-279.14. Suspension to continue until judgments satisfied. — Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided subject to the exemptions stated in §§ 20-279.13 and 20-279.16 of this article.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article. (1953, c. 1300, s. 14; 1969, c. 186, s. 5.)

Editor's Note. — The 1969 amendment proof of financial responsibility" near the deleted "and until the said person gives end of the first paragraph.

§ 20-279.15. Payment sufficient to satisfy requirements.—In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this article, be deemed satisfied:

- (1) When ten thousand dollars (\$10,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
- (2) When, subject to such limit of ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person, the sum of twenty thousand dollars (\$20,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
- (3) When five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. (1953, c. 1300, s. 15; 1963, c. 1238; 1967, c. 277, s. 3.)

Editor's Note.—

The 1967 amendment substituted "ten thousand dollars (\$10,000.00)" for "five thousand dollars (\$5,000.00)" in subdivisions (1) and (2) and "twenty thousand dollars (\$20,000.00)" for "ten thousand dollars (\$10,000.00)" in subdivision (2).

Section 10, c. 277, Session Laws 1967, provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

§ 20-279.16. Installment payment of judgments; default.

(b) The Commissioner shall not suspend a license or a nonresident's operating privilege, and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(1969, c. 186, s. 6.)

Editor's Note. — The 1969 amendment deleted "gives proof of financial responsibility and" near the middle of subsection (b).

As only subsection (b) was changed by the amendment, the rest of the section is not set out.

§ 20-279.17: Repealed by Session Laws 1967, c. 866.

§ 20-279.19. Certificate of insurance as proof.

Cited in Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

§ 20-279.21. "Motor vehicle liability policy" defined.

(b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such

motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: Ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of § 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars (\$5,000.00) and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a *prima facie* presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured, for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

- a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute

in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law.

- b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in such event, the insured or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in such notice the time, date and place of such injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer such further reasonable information concerning the accident and the injury as the insurer shall request. If such forms are not so furnished within 15 days, the insured shall be deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of such injury or accident to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent.

No insurer may cancel, refuse to renew or reduce the coverage under any automobile liability insurance policy because an insured under such policy has made a claim in good faith under the uninsured motorist endorsement of such policy.

Where an insured's policy has been cancelled, or the insurer has failed to renew following a claim made by the insured under the uninsured motorist's endorsement, the insurer upon the written request of the insured shall furnish such insured with the reason or reasons why it has cancelled or failed to renew such policy. Such information furnished by the insurer to the insured shall be privileged, and shall not subject the insurer to liability for libel, slander or other defamation.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the

tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or G.S. 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(e) Such motor vehicle liability policy need not insure against loss from any liability for which benefits are in whole or in part either payable or required to be provided under any workmen's compensation law nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

- (1) Except as hereinafter provided, and with respect to policies of motor vehicle liability insurance written under the North Carolina assigned risk plan, the liability of the insurance carrier with respect to the insurance required by this article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan, a default judgment taken against an assigned risk insured shall not be used as a basis for obtaining judgment against

the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered mail with return receipt requested, a copy of summons, complaint, or other pleading, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the assigned risk bureau. The Commissioner of Motor Vehicles and the North Carolina assigned risk bureau, shall, upon request made, furnish to the plaintiff or his counsel the identity and address of the insurance carrier as shown upon the records of the Department or the bureau, and whether the policy is an assigned risk policy. Neither the Department of Motor Vehicles nor the assigned risk bureau shall be subject to suit by reason of a mistake made as to the identity of the carrier and its address in response to a request made for such information.

The insurer upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading, in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the

time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully cancelled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the assigned risk insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;
- (3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;
- (4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the article shall constitute the entire contract between the parties.

(1967, c. 277, s. 4; c. 854; c. 1159, s. 1; c. 1162, s. 1; c. 1186, s. 1; c. 1246, s. 1.)

Editor's Note.—

Chapter 277, Session Laws 1967, substituted "Ten thousand dollars (\$10,000.00)" for "Five thousand dollars (\$5,000.00)" and "twenty thousand dollars (\$20,000.00)" for "ten thousand dollars (\$10,000.00)" in subdivision (2) of subsection (b) and deleted, at the end of the first sentence of subdivision (3) of subsection (b) a proviso relating to increased limits coverage. Section 10, c. 277, provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

The proviso which had been deleted by c. 277 was amended by c. 1159, Session Laws 1967, so as to read "and provided that an insured shall be entitled to secure increased limits coverage of fifteen thousand dollars (\$15,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, thirty thousand dollars (\$30,000.00) because of bodily injury to or death of two or more persons in any one accident if the policy of such insured carries liability limits of equal or greater amounts for the protection of third persons." Section 3, c. 1159, provides: "This act shall apply only to new and renewal automobile liability insurance policies issued on and after January 1, 1968."

Chapter 854, Session Laws 1967, effective Jan. 1, 1968, rewrote subsection (e).

Chapter 1162, Session Laws 1967, inserted "or any other persons in lawful pos-

session" in subdivision (2) of subsection (b). Section 2, c. 1162, provides: "It shall be a defense to any action that the operator of a motor vehicle was not in lawful possession on the occasion complained of." Section 4, c. 1162, provides: "This act shall be in full force and effect from and after its ratification, but shall not affect any claims or causes of action arising before ratification." The act was ratified July 6, 1967.

Chapter 1186, Session Laws 1967, added the second, third, fourth, fifth and sixth paragraphs (including paragraphs a and b) in subdivision (3) of subsection (b). Section 3, c. 1186, provides that the act shall become effective from and after ratification, shall not apply to existing policies of insurance, but shall apply to renewals and to new policies issued after its effective date. The act was ratified July 6, 1967.

Chapter 1246, Session Laws 1967, effective July 1, 1967, rewrote subdivision (1) of subsection (f). Section 3, c. 1246, provides that the act shall become effective on and after July 1, 1967, and shall apply to any action or actions initiated thereafter.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner" in subsection (b) (3).

As the rest of the section was not changed by the amendments, only subsections (b), (e) and (f) are set out.

For a note on the statutory definition of an "uninsured motor vehicle" when the liability insurer is insolvent or denies coverage, see 45 N.C.L. Rev. 551 (1967).

For note on liability of insurer beyond policy limits, see 47 N.C.L. Rev. 453 (1969).

The manifest purpose of this article, etc.—

In accord with 1st paragraph in original. See *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

In accord with 2nd paragraph in original. See *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967); *Strickland v. Hughes*, 273 N.C. 481, 160 S.E.2d 313 (1968).

A compulsory motor vehicle insurance act is a remedial statute and will be liberally construed so that the beneficial purpose intended by its enactment by the General Assembly may be accomplished. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

This section was enacted as remedial legislation and is to be liberally construed to effectuate its purpose, that being to provide, within fixed limits, some financial recompense to innocent persons who receive bodily injury or property damage, and to the dependents of those who lose their lives through the wrongful conduct of an uninsured motorist who cannot be made to respond in damages. *Hendricks v. United States Fidelity & Guar. Co.*, 5 N.C. App. 181, 167 S.E.2d 876 (1969).

Policy to Include Certain Provisions.—A close reading of subsections (b) (3) a and (b) (3) b indicates that they provide for the inclusion of certain provisions in the policy, namely, that the insurer shall be bound by a final judgment against the uninsured motorist, under certain conditions, and that suit may be against the insurer directly in case of injury from collision with an unidentifiable motorist. *Hendricks v. United States Fidelity & Guar. Co.*, 5 N.C. App. 181, 167 S.E.2d 876 (1969).

Distinction between Owner's Policy and Operator's Policy.—The distinction between an owner's policy of liability insurance and an operator's policy of liability insurance, the required provisions of each being set forth in this section, is pointed out in *Howell v. Travelers Indem. Co.*, 237 N.C. 227, 74 S.E.2d 610 (1953), and *Lofquist v. Allstate Ins. Co.* 263 N.C. 615, 140 S.E.2d 12 (1965). *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Policies Are Mandatory.—

In North Carolina today all insurance policies covering loss from liability arising out of the ownership, maintenance, or use of a motor vehicle are, to the extent re-

quired by this section, mandatory. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

As Is Coverage of Owner's, etc.—

In accord with 1st paragraph in original. See *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Policy Violations.—

In accord with 2nd paragraph in original. See *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

Liability under Assigned Risk Policy Becomes Absolute When Injury or Damage Occurs.—As provided in subsection (f) (1) of this section liability becomes absolute when a plaintiff's injury and damage occurs notwithstanding subsequent violations by the insured under an assigned risk policy of his obligations to the insurance company under the policy provisions. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

And Insurer Is Deprived of Defenses Otherwise Available under Standard Policy Provisions.—Subsection (f) (1) of this section, as interpreted and applied by the Supreme Court, deprives the insurer under an assigned risk policy of the defenses otherwise available under its standard policy provisions. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

And This Provision Does Not Violate State or Federal Constitution.—Subsection (f) (1) of this section, when applied to an assigned risk policy issued in compliance with the plan set forth in § 20-279.34 and regulations pursuant thereto, does not deprive an insurance company of its property without due process of law and otherwise than by the law of the land in contravention of the Fourteenth Amendment to the Constitution of the United States and N.C. Const., Art. I, §§ 1 and 17. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967), decided under this section as it stood before the 1967 amendments thereto.

Exclusionary Provisions.—

A provision in a liability policy excluding coverage if the accident in question is covered by other insurance does not contravene the North Carolina Financial Responsibility Law. *Allstate Ins. Co. v. Shelby Mut. Ins. Co.*, 269 N.C. 341, 152 S.E.2d 436 (1967), commented on in 46 N.C.L. Rev. 433 (1968); Government Em-

ployees Ins. Co. v. Lumbermens Mut. Cas. Co., 269 N.C. 354, 152 S.E.2d 445 (1967).

Compliance with Voluntary Policy Provisions Is a Condition Precedent to Recovery.—Where coverage in a policy is in addition to the coverage required by the Motor Vehicle Safety and Financial Responsibility Act, provisions requiring that an insured give notice of an accident, and requiring the insured's cooperation in defense of any action against him are binding and enforceable. Moreover, compliance with such policy provisions is a condition precedent to recovery, with the burden of proof on the insured to show compliance, where the policy provides, "No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy," or words of like import. *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Hence, Failure to Forward Suit Papers Relieves Insurer of Liability.—While no decision of the Supreme Court involving a policy provision, "If claim is made or suit is brought against the Insured, he shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative," has come to the court's attention, decisions in other jurisdictions hold this is an unambiguous, reasonable and valid stipulation, and that, unless the insured or his judgment creditor can show compliance by the insured with this policy requirement, the insurer is relieved of liability. *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Unless Insurer Loses Right to Defeat Recovery by Waiver or Estoppel.—An automobile liability insurer may, by waiver or estoppel, lose its right to defeat a recovery under a liability policy because of the insured's failure to comply with the policy provision as to the forwarding of suit papers. *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

The essential elements of a waiver are: (1) The existence, at the time of the alleged waiver, of a right, advantage or benefit; (2) the knowledge, actual or constructive, of the existence thereof; and (3) an intention to relinquish such right, advantage or benefit. *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Rights of Injured Party in Action Based on Voluntary Policy.—With reference to an owner's policy of insurance, unless the action be based on policy provisions required by this section, an injured party

who obtains a judgment against the insured has no greater rights against the insurer than those of the insured. *Clemmons v. Nationwide Mut. Ins. Co.*, 267 N.C. 495, 148 S.E.2d 640 (1966).

Construction of Provision Requiring "Omnibus Clause".—

The omnibus clause has been interpreted by the Supreme Court of North Carolina according to the "moderate" rule rather than the "hell and high water" rule, as recommended in 41 N.C.L. Rev. 232 (1963) et seq. *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

Permission May Be Expressed or Inferred.—The owner's permission for the use of the insured vehicle may be expressed or, under certain circumstances, it may be inferred. *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

Express Permission.—

In accord with original. See *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

Implied permission, etc.—

In accord with original. See *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

The relationship between the owner and the user, such as kinship, social ties, and the purpose of the use, all have bearing on the critical question of the owner's implied permission for the actual use. *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

A permission to use an automobile may be implied, and strong social relationships and ties between the owner and the bailee are relevant upon the question of the extent of such implied permission. *Wilson v. Hartford Accident & Indem. Co.*, 272 N.C. 183, 158 S.E.2d 1 (1967).

Who May Grant Permission.—

Ordinarily, one permittee within the coverage of a liability policy does not have authority to select another permittee without specific authority from the named insured. *Bailey v. General Ins. Co. of America, Inc.*, 265 N.C. 675, 144 S.E.2d 898 (1965).

Bailee's Use Must Be within Scope of Permission.—Under the omnibus clause, the coverage of a policy extends to the liability of a bailee of the automobile for an accident only where the bailee's use of the vehicle at the time of the accident is within the scope of the permission granted to him, the burden being upon the plaintiff to show that such use was within the scope of the permission. *Wilson v. Hart-*

ford Accident & Indem. Co., 272 N.C. 183, 158 S.E.2d 1 (1967).

When the bailee deviates in a material respect from the grant of permission, his use of the vehicle, while such deviation continues, is not a permitted use within the meaning of the omnibus clause of a policy. *Wilson v. Hartford Accident & Indem. Co.*, 272 N.C. 183, 158 S.E.2d 1 (1967).

Express Limitations Not Overcome by Proof of Friendly Relations. — Proof of friendly relations, which might otherwise imply permission, cannot overcome the effect of a limitation as to time, purpose or locality expressly imposed by the owner upon the bailee at the time of the delivery of the automobile to the bailee by the owner on the occasion in question. *Wilson v. Hartford Accident & Indem. Co.*, 272 N.C. 183, 158 S.E.2d 1 (1967).

Purpose of Uninsured Motorist Provisions. — Subdivision (3) of subsection (b) of this section was enacted so as to include protection against uninsured motorists. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967); *Wright v. Fidelity & Cas. Co.*, 270 N.C. 577, 155 S.E.2d 100 (1967).

The purpose of the uninsured motorist statute was to provide, within fixed limits, some financial recompense to innocent persons who receive bodily injury or property damage, and to the dependents of those who lose their lives through the wrongful conduct of an uninsured motorist who cannot be made to respond in damages. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

Uninsured motorist's coverage is intended, within fixed limits, to provide financial recompense to innocent persons who receive injuries and the dependents of those who are killed, through the wrongful conduct of motorists who, because they are uninsured and not financially responsible, cannot be made to respond in damages. *Wright v. Fidelity & Cas. Co.*, 270 N.C. 577, 155 S.E.2d 100 (1967).

Uninsured motorists coverage is designed to close the gaps inherent in motor vehicle financial responsibility and compulsory insurance legislation. *Wright v. Fidelity & Cas. Co.*, 270 N.C. 577, 155 S.E.2d 100 (1967).

The uninsured motorist statute was enacted by the General Assembly as a result of public concern over the increasingly important problem arising from property damage, personal injury, and death inflicted by motorists who are uninsured and financially irresponsible. *Moore v. Hartford*

Fire Ins. Co., 270 N.C. 532, 155 S.E.2d 128 (1967).

Subdivision (3) of subsection (b) of this section provides for a limited type of compulsory automobile liability coverage against uninsured motorists. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

Construction of Uninsured Motorists Coverage. — In determining whether the injury arose out of the "ownership, maintenance, or use" of the motor vehicle, the same rules of construction apply in construing uninsured motorists coverage as apply in construing a standard liability insurance policy. *Williams v. Nationwide Mut. Ins. Co.*, 269 N.C. 235, 152 S.E.2d 102 (1967).

The term "uninsured vehicle," when used in an uninsured motorists endorsement, must be interpreted in the light of the fact that such endorsement is designed to protect the insured, and any operator of the insured's car with the insured's consent, against injury caused by the negligence of uninsured or unknown motorists. *Buck v. United States Fid. & Guar. Co.*, 265 N.C. 285, 144 S.E.2d 34 (1965).

The terms "ownership, maintenance and use" should not be treated as mere surplusage. They were placed in the policy in order to cover situations distinct and separate from any other term. *Williams v. Nationwide Mut. Ins. Co.*, 269 N.C. 235, 152 S.E.2d 102 (1967).

Hence, in an action on the uninsured motorists clause of an automobile insurance policy, where the allegations were to the effect that plaintiff, while underneath the uninsured vehicle, raised on blocks, making repairs, was injured when the owner removed a front wheel and the car fell or rolled upon plaintiff, it was held that repairs are a necessary incident to maintenance, and the allegations brought plaintiff within the coverage of the policy. *Williams v. Nationwide Mut. Ins. Co.*, 269 N.C. 235, 152 S.E.2d 102 (1967).

Vehicle "Uninsured" Unless Policy Covers Liability of Person Using It. — An automobile on which an automobile liability insurance policy has been issued is uninsured within the meaning of an uninsured motorists endorsement, unless such policy covers the liability of the person using it and inflicting injury on the occasion of the collision or mishap. *Buck v. United States Fid. & Guar. Co.*, 265 N.C. 285, 144 S.E.2d 34 (1965).

Vehicle Insured in Another State. — In an action on the uninsured motorists clause in a collision policy, evidence that the ve-

hicle causing the loss was insured in another state, where it was registered and licensed, by a company authorized to do business in that state but not in North Carolina, was insufficient to carry the burden of proving the allegation that the vehicle was an uninsured automobile. *Rice v. Aetna Cas. & Sur. Co.*, 267 N.C. 421, 148 S.E.2d 223 (1966).

Insolvency of Insurer of Vehicle Causing Loss.—In an action on the uninsured vehicle clause in a collision policy, evidence that the vehicle causing the loss was insured in another state, where it was registered and licensed, and that subsequent to the collision the insurer was placed in receivership because of its insolvency, and that a claim was filed with the insurer's receiver was insufficient to carry the burden of proving that the vehicle causing the injury was an uninsured motor vehicle. *Rice v. Aetna Cas. & Sur. Co.*, 267 N.C. 421, 148 S.E.2d 223 (1966), decided under this section as it stood before the 1965 and 1967 amendments thereto.

What Must Be Shown under Uninsured Motorists Endorsement.—The insured, in order to be entitled to the benefits of the uninsured motorists endorsement, must show (1) he is legally entitled to recover damages, (2) from the owner or operator of an uninsured automobile, (3) because of bodily injury, (4) caused by accident, and (5) arising out of the ownership, maintenance, or use of the uninsured automobile. *Williams v. Nationwide Mut. Ins. Co.*, 269 N.C. 235, 152 S.E.2d 102 (1967).

Subdivision (3) of subsection (b) of this section is designed to protect the insured as to his actual loss within the statutory limit of \$5,000 for one person but it was not intended by the General Assembly that an insured shall receive more from such coverage than his actual loss, although he is the beneficiary under multiple policies issued pursuant to the statute. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

"Other Insurance" Clauses Contrary to Statutory Amount of Coverage Not Permitted.—Subdivision (3) of subsection (b) of this section does not permit "other insurance" clauses in the policy which are contrary to the statutory limited amount of coverage. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

Provision That Uninsured Motorist Clause Shall Constitute Only Excess Coverage Violates Statute.—A policy provision that its uninsured motorist clause should constitute only excess insurance over any

other similar insurance available to the injured person, is contrary to the statutory provisions of subdivision (3) of subsection (b) of this section. *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

Insured Is Not Limited to One \$5000 Recovery Where He Is Beneficiary of More Than One Policy.—This section does not limit an insured only to one \$5000 recovery under uninsured motorist coverage where his loss for bodily injury or death is greater than \$5000 and he is the beneficiary of more than one policy issued under subdivision (3) of subsection (b). *Moore v. Hartford Fire Ins. Co.*, 270 N.C. 532, 155 S.E.2d 128 (1967).

Provision for Compulsory Arbitration Conflicts with Statute.—A provision in an insurance policy, in effect, ousting the jurisdiction of the court to judicially determine liability and damages and providing for compulsory arbitration between the insured and the company, if they do not agree, conflicts with the beneficent purposes of our uninsured motorist statute favorable to the insured, and the provision of the statute controls. *Wright v. Fidelity & Cas. Co.*, 270 N.C. 577, 155 S.E.2d 100 (1967).

Negligently Self-Inflicted Injury Not Compensable.—This section was not intended to compensate an insured for injury and damage negligently inflicted upon himself. *Strickland v. Hughes*, 273 N.C. 481, 160 S.E.2d 313 (1968).

Institution of Action against Hit-and-Run Driver May Not Be Made Condition Precedent to Recovery under Policy.—In many cases it is impossible to determine the identity of a hit-and-run driver. To hold that the institution of an action by the insured against a hit-and-run driver, and to recover damages from him for his tort, is a condition precedent to the insurer's liability under uninsured motorist coverage, would in most such cases defeat insurer's liability against uninsured motorist coverage. *Wright v. Fidelity & Cas. Co.*, 270 N.C. 577, 155 S.E.2d 100 (1967).

No Conflict between Statute and Policy Requirement.—There is no conflict between the term "hit-and-run motor vehicle," as used in the statute relating to uninsured or hit-and-run motor vehicle coverage, and a policy requirement of "physical contact of such automobile" with the insured or with an automobile occupied by the insured. *Hendricks v. United States Fidelity & Guar. Co.*, 5 N.C. App. 181, 167 S.E.2d 876 (1969).

Applied in *Manning v. State Farm Mut.*

Auto. Ins. Co., 243 F. Supp. 619 (W.D.N.C. 1965); Abernethy v. Utica Mut. Ins. Co., 373 F.2d 565 (4th Cir. 1967).

Cited in Aldridge v. State, 4 N.C. App. 297, 166 S.E.2d 485 (1969).

§ 20-279.22. Notice of cancellation or termination of certified policy.

This section has, etc.—

In accord with original. See Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Statutes Control Policy Provisions as to Cancellation.—The provisions of this article and article 13 of this chapter, liberally construed to effectuate the legislative policy, control any provision written into a policy which otherwise would give an insurance company a greater right to cancel than

is provided by the statute. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Right of carrier to cancel policy issued under assigned risk plan is subject to the provisions of article 13 of this chapter as so implemented by the provisions of this article incorporated by reference therein. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

§ 20-279.25. Money or securities as proof.—(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him twenty-five thousand dollars (\$25,000.00) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of twenty-five thousand dollars (\$25,000.00). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(1967, c. 277, s. 5.)

Editor's Note.—

The 1967 amendment substituted "twenty-five thousand dollars (\$25,000.00)" for "fifteen thousand dollars (\$15,000.00)" in two places in subsection (a)

As subsection (b) was not changed by the amendment, it is not set out.

Section 10, c. 277, Session Laws 1967 provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

§ 20-279.34. Assigned risk plans. — The Commissioner of Insurance, after consultation with representatives of the insurance carriers licensed to write motor vehicle liability insurance in this State, shall consider such reasonable plans and procedures as such insurance carriers may submit to him for the equitable apportionment among such insurance carriers of those applicants for motor vehicle liability policies who are required to file proof of financial responsibility under this article but who are unable to secure such insurance through ordinary methods.

Upon the approval by the Commissioner of Insurance of any such plans and procedures thus submitted, all insurance carriers licensed to write motor vehicle liability insurance in this State, as a prerequisite to further engaging in writing such insurance in this State, shall formally subscribe to, and participate in, such plans and procedures so submitted.

In the event the Commissioner of Insurance, in the exercise of his discretion, does not approve any plan so submitted, or should no such plan be submitted, then the Commissioner of Insurance shall formulate and put into effect reasonable plans and procedures for the apportionment among such insurance carriers of all such applications for motor vehicle liability insurance submitted to him in accordance with the provisions of this article by persons entitled to coverage under this article but unable to obtain such coverage through ordinary methods.

Should no such plan be submitted by the insurance carriers and approved by the Commissioner of Insurance, then as a prerequisite to further engaging in the selling of motor vehicle liability insurance in this State, every insurance car-

rier licensed to write motor vehicle liability in this State shall formally subscribe to and participate in the plans and procedures formulated by the Commissioner of Insurance as provided in this section, and every such insurance carrier shall accept any and all risks assigned to it by the Commissioner of Insurance under such plan and shall upon payment of a proper premium issue a policy covering the same, such policy to meet at least the minimum requirements for establishing financial responsibility as provided in this article.

Every person required to file proof of financial responsibility under the provisions of this article who has been unable to obtain a motor vehicle liability insurance policy through ordinary methods shall have the right to apply to the Commissioner of Insurance to have his risk assigned to an insurance carrier licensed to write, and writing motor vehicle liability insurance in this State, and the insurance carrier shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article. In each instance where application is made to the Commissioner of Insurance to have a risk assigned to an insurance carrier, it shall be deemed that the applicant has been denied the issuance of a liability insurance policy, and the Commissioner of Insurance shall, upon receipt of such application, which shall have attached thereto a statement from the Motor Vehicles Department that the suspension of the applicant's license will be no longer in effect after the date noted therein, immediately assign the risk to an insurance carrier, which carrier shall be required, as a prerequisite to the further engaging in selling motor vehicle liability insurance in this State, to issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article.

The Commissioner of Insurance shall have the authority to make reasonable rules and regulations for the assignment of risks to insurance carriers.

The Commissioner of Insurance shall establish, or cause to be established, such rate classifications, rating schedules, rates, rules and regulations to be used by insurance carriers issuing assigned risk motor vehicle liability policies in accordance with this article as appear to him to be proper; provided the Commissioner of Insurance is authorized but not required to establish rates for assigned risk liability policies which are higher than approved manual rates; and in the case of assigned risk policies issued in excess of the minimum limits the Commissioner may establish higher rates or a surcharge adequate to cover the costs of underwriting such excess limits.

In the establishment of rate classification, rating schedules, rates, rules and regulations, the Commissioner of Insurance shall be guided by such principles and practices as have been established under his statutory authority to regulate motor vehicle liability insurance rates, and he may act in conformity with his statutory discretionary authority in such matters, and may in his discretion assign to the North Carolina automobile rate administrative office, or other State bureau or agency any of the administrative duties imposed upon him by this article.

The Commissioner of Insurance is empowered, if in his judgment he deems such action to be justified after reviewing all information pertaining to the applicant or policyholder available from his records, the records of the Department of Motor Vehicles, or from other sources:

- (1) To refuse to assign an application.
- (2) To approve the rejection of an application by an insurance carrier.
- (3) To approve the cancellation of a motor vehicle liability policy by an insurance carrier; or
- (4) To refuse to approve the renewal or the reassignment of an expiring policy.

The power granted the Commissioner of Insurance under the provisions of this article to deny, directly or indirectly, insurance to any person applying for

insurance hereunder, shall be restricted to persons whose licenses have been suspended and continue to be suspended by the Department of Motor Vehicles under authority of § 20-16 of the General Statutes or otherwise and the power of the Commissioner of Insurance to approve the revocation or cancellation of insurance under the provisions of this article shall be exercised only in the event of nonpayment of premium or when the Department of Motor Vehicles suspends the license of the insured under the authority granted to it under the Motor Vehicles Act.

The Commissioner of Insurance shall not be held liable for any act, or omission, in connection with the administration of the duties imposed upon him by the provisions of this article, except upon proof of actual malfeasance.

The provisions of this article relevant to assignment of risks shall be available to nonresidents who are unable to obtain a motor vehicle liability insurance policy with respect only to motor vehicles registered and used in this State.

The provisions of this section shall apply to vehicles operated by a county or municipality as an ambulance service or as a rescue squad, and the assigned risk plan shall provide for the assignment of policies on such vehicles. (1953, c. 1300, s. 34; 1963, c. 1208, ss. 1, 2; 1967, c. 277, s. 6; c. 1155; 1969, c. 744, s. 2.)

Cross Reference.—See § 20-279.21 and the note thereto.

Editor's Note.—

Chapter 277, Session Laws 1967, deleted the proviso and last sentence added to the fifth paragraph by the 1963 amendment. Section 10, c. 277, provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

The former last sentence in the fifth paragraph, which had been deleted by c. 277, was amended by c. 1155, Session Laws 1967, effective July 1, 1967, so as to read "Upon receipt of such application, from a person entitled to coverage under this article, the Commissioner of Insurance shall assign the applicant to an insurance carrier as provided in this article, and such carrier shall be required to issue the policy in an amount not to exceed fifteen thousand dollars (\$15,000.00) because of bodily injury or death of one person in any one accident, and, subject to said limit for one person, in an amount not to exceed thirty thousand dollars (\$30,000.00) because of bodily injury to or death of two or more persons in any one accident and in an amount not to exceed five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident."

The 1969 amendment added the last paragraph.

Liberal Construction.—Interpreting this section liberally, in order to accomplish the legislative purpose of maintenance of financial responsibility throughout the period of registration of the vehicle, it is

construed to mean that, notwithstanding provisions in the policy, an insurance carrier may cancel an assigned risk policy, issued to fulfil the requirements of either this article or article 13 of this chapter, only when it is shown both that (1) there has been a nonpayment of premium or a suspension of the driver's license of the insured, and (2) the Commissioner of Insurance has approved the cancellation, which he may apparently do by the issuance of general rules and regulations with reference thereto. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 155 S.E.2d 812 (1968).

Insurance Carriers Required to Subscribe to and Participate in Assigned Risk Plan.—All insurance carriers, as a prerequisite to engaging and writing motor vehicle insurance in this State, must subscribe to, and participate in, the plans and procedures constituting the assigned risk plan. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

And This Requirement Does Not Constitute Denial of Due Process.—The fact that an insurance company is required to issue assigned risk motor vehicle liability policies as a condition of transacting liability insurance business in North Carolina does not constitute a denial of due process in violation of State and federal constitutional provisions. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

Purpose of Assigned Risk Plan.—The assigned risk plan authorized by this section is for the equitable apportionment among insurance carriers licensed to write motor vehicle insurance in this State of those applicants for motor vehicle liability policies who are required to file proof of

financial responsibility under this article but who are unable to secure such insurance through ordinary methods. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

This section is incorporated by reference into the Financial Responsibility Act of 1957 by § 20-314. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

Act Must Be Read into Policy and Construed Liberally.—A policy having been issued pursuant to the assigned risk plan (§ 20-279.34) and for the purpose of fulfilling the requirement of the Financial Responsibility Act of 1957 (§ 20-309 et seq.), the provisions of that act, relative to the cancellation of such policies, must be read into this policy and construed liberally so as to effectuate the purpose of the act. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968); *Grant v. State Farm Mut. Auto. Ins. Co.*, 1 N.C. App. 76, 159 S.E.2d 368 (1968).

Assigned risk insurance is compulsory both as to the insurer and the insured, made so by law. *Grant v. State Farm Mut. Auto. Ins. Co.*, 1 N.C. App. 76, 159 S.E.2d 368 (1968).

Insurance supplied by a policy issued under the assigned risk plan is compulsory both as to the insured owner and as to the insurance carrier. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

Right of Cancellation of Assigned Risk Policy.—It is expressly provided in § 20-310 (b) that the provisions thereof shall not apply to policies issued under the assigned risk plan. Obviously, however, it was not the purpose of the legislature to give to the company a more extensive right of cancellation of an assigned risk policy than of other policies. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

To avoid liability to a third party beneficiary of an assigned risk automobile insurance policy, the insurer must allege and prove cancellation and termination of the policy in accordance with the applicable statutes. *Grant v. State Farm Mut. Auto. Ins. Co.*, 1 N.C. App. 76, 159 S.E.2d 368 (1968).

Nonpayment of Fee for Filing Form SR-22.—The failure of an insured under the assigned risk plan to pay his insurer a fee for filing a certificate of financial responsibility (Form SR-22) with the Department of Motor Vehicles is not a nonpayment of premium within the purview of this section for which the insurer may cancel a policy of automobile liability insurance. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

Cited in *Strickland v. Hughes*, 273 N.C. 481, 160 S.E.2d 313 (1968); *Perkins v. American Mut. Fire Ins. Co.*, 274 N.C. 134, 161 S.E.2d 536 (1968).

ARTICLE 10.

Financial Responsibility of Taxicab Operators.

§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.

(b) As used in this section proof of financial responsibility shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: Ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident.

(1967, c. 277, s. 7.)

Editor's Note.—

The 1967 amendment substituted "Ten thousand dollars (\$10,000.00)" for "Five thousand dollars (\$5,000.00)" and "twenty

thousand dollars (\$20,000.00)" for "ten thousand dollars (\$10,000.00)" in subsection (b).

As subsections (a) and (c) were not

changed by the amendment, they are not set out.

Section 10, c. 277, Session Laws 1967, provides: "This act shall become effective Jan. 1, 1968, and where the manner of giv-

ing proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

ARTICLE 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.—From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: Ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident, and twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for. (1953, c. 1017, s. 1; 1955, c. 1296; 1965, c. 349, s. 1; 1967, c. 277, s. 8.)

Editor's Note.—

The 1967 amendment substituted "Ten thousand dollars (\$10,000.00)" for "Five thousand dollars (\$5,000.00)" and "twenty thousand dollars (\$20,000.00)" for "ten thousand dollars (\$10,000.00)." Section 10, c. 277, Session Laws 1967.

provides: "This act shall become effective Jan. 1, 1968, and where the manner of giving proof of financial responsibility is by automobile liability policy, the same shall apply only to policies written or renewed on or after said effective date."

ARTICLE 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-286. Definitions.

(6) "Established place of business" means a salesroom containing at least 64 square feet of floor space in a permanent enclosed building or structure, said salesroom shall have displayed thereon or immediately adjacent thereto a sign clearly and distinctly designating the trade name of the business at which a permanent business of bartering, trading and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place, and shall not mean tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement.

ment, devoted principally to the business of a motor vehicle dealer, as herein defined.

(11) "Motor vehicle dealer" and "dealer" mean any person, firm, association, or corporation engaged in the business of selling, soliciting, or advertising the sale of motor vehicles.

The term "motor vehicle dealer" or "dealer" does not include:

- a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or
- b. Public officers while performing their official duties; or
- c. Persons disposing of motor vehicles acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this article; or
- d. Persons, firms or corporations who shall sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes finance companies who shall sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.
- e. Persons, firms or corporations manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than 1500 pound load.

(1967, c. 1126, s. 1; c. 1173.)

Editor's Note. — The first 1967 amendment inserted "containing at least 64 square feet of floor space" near the beginning of subdivision (6) and inserted "said salesroom shall have displayed thereon or immediately adjacent thereto a sign clearly and distinctly designating the trade name of the business" in that subdivision.

§ 20-289. License fees.—(a) The license fee for each fiscal year, or part thereof, shall be as follows:

- (1) For motor vehicle dealers, distributors, and wholesalers, twenty-one dollars (\$21.00) for each principal place of business, plus five dollars (\$5.00) for a supplementary license for each car lot not immediately adjacent thereto.
- (2) For manufacturers, fifty dollars (\$50.00), and for each factory branch in this State, thirty dollars (\$30.00).
- (3) For motor vehicle salesmen, three dollars and fifty cents (\$3.50).
- (4) For factory representatives, or distributor branch representatives, four dollars (\$4.00).
- (5) Manufacturers, wholesalers, and distributors may operate as a motor vehicle dealer, without any additional fee or license.

(1969, c. 593.)

Editor's Note.—The 1969 amendment, effective July 1, 1969, increased the fee for each principal place of business in subdivision (1), for each factory branch in subdivision (2), for each salesman in subdivision

The second 1967 amendment added paragraph e at the end of subdivision (11).

As only subdivisions (6) and (11) were changed by the amendments, the rest of the section is not set out.

(3) and for factory representatives or distributor branch representatives in subdivision (4) of subsection (a).

As subsection (b) was not changed by the amendment, it is not set out.

§ 20-294. Grounds for denying, suspending or revoking licenses.

- (2) Willful and intentional failure to comply with any provision of this article or the willful and intentional violation of G.S. 20-52.1, G.S. 20-

75, G.S. 20-82, G.S. 20-108, G.S. 20-109 or revision and cancellation of dealer's license and dealer's plates under G.S. 20-110 (e) or G.S. 20-110 (f) or any lawful rule or regulation promulgated by the Department under this article.

(1967, c. 1126, s. 2.)

Editor's Note.—

The 1967 amendment inserted "or the willful and intentional violation of G.S. 20-52.1, G.S. 20-75, G.S. 20-82, G.S. 20-108, G.S. 20-109 or revision and cancellation of dealer's license and dealer's plates

under G.S. 20-110 (e) or G.S. 20-110 (f)" in subdivision (2).

As only subdivision (2) was changed by the amendment, the rest of the section is not set out.

ARTICLE 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be *prima facie* evidence that no financial responsibility exists with regard to the vehicle concerned and the Department of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than 60 days after the date of receipt of the registration plate by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Department, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within twenty (20) days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(e) No insurance policy provided in subsection (d) may be terminated by cancellation or otherwise by the insurer without having given the North Carolina Motor Vehicles Department notice of such cancellation fifteen (15) days prior to effective date of cancellation. Where the insurance policy is terminated by the insured the insurer shall immediately notify the Department of Motor Vehicles that such insurance policy has been terminated. The Department of Motor Vehicles upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 15 days from date of notice given by the Department, certify to the Department that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial responsibility as herein required shall be *prima facie* evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been surrendered to the Department of Motor Vehicles by surrender to an agent or representative of the Department of Motor Vehicles and so designated by the Commissioner of Motor Vehicles or depositing the same in the United States mail, addressed to the Department of Motor Vehicles, Raleigh, North Carolina, the Department of Motor Vehicles shall revoke the owner's registration plate for 60 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than

60 days after the date of receipt of the registration plate by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2.)

Editor's Note.—

The second 1967 amendment deleted, in subsection (c), provisions as to suspension of an operator's license and increased the period of revocation of registration from thirty to sixty days. The amendment also rewrote the fourth sentence of subsection (e) and substituted "60" for "30" and deleted "and operator's license" in the next to the last sentence of that subsection.

The first 1967 amendment had substituted "surrendered to an employee or agent of the Department of Motor Vehicles who has been designated by the Commissioner for this purpose, or it has been deposited in the United States mail addressed to the Department of Motor Vehicles, Raleigh, North Carolina" for "forwarded to the Department of Motor Vehicles" in the fourth sentence in subsection (e) and had inserted "issued for the vehicle at the time liability insurance was terminated or the current registration plate for the vehicle if the year registration has changed" in that sentence. The sentence is set out above as last amended by c. 857.

As the other subsections were not affected by the amendments, only subsections (c) and (e) are set out.

This article is a remedial statute and will be liberally construed to carry out its beneficent purpose of providing compensation to those who have been injured by automobiles. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The manifest purpose of this article, etc.—

The manifest purpose of this article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle. Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

The purpose of this article is to assure the protection of liability insurance, or other type of established financial responsibility, up to the minimum amount specified in this article, to persons injured by the negligent operation of a motor vehicle upon the highways of this State. To that end, the act makes it mandatory that the owner of a registered motor vehicle maintain proof of financial responsibility throughout such registration of the vehicle. This may be done by the owner's obtaining, and maintaining in effect, a policy of

automobile liability insurance (§§ 20-279.19, 20-314). To enable an owner so to comply with this requirement of the act, even though he is unable to procure such insurance in the usual way, the act provides that the provisions of the Financial Responsibility Act of 1953, with reference to the assigned risk plan, "shall apply to filing and maintaining proof of financial responsibility required by" the Act of 1957 (§ 20-314). Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

The manifest purpose of this article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a "motor vehicle liability policy," to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

The primary purpose of the law requiring compulsory insurance is to furnish at least partial compensation to innocent victims who have suffered injury and damage as a result of the negligent operation of a motor vehicle upon the public highway. Allstate Ins. Co. v. Hale, 270 N.C. 195, 154 S.E.2d 79 (1967).

This Article and Article 9A, etc.—

In accord with 2nd paragraph in original. See First Union Nat'l Bank v. Hackney, 266 N.C. 17, 145 S.E.2d 352 (1965); Jones v. State Farm Mut. Auto. Ins. Co., 270 N.C. 454, 155 S.E.2d 118 (1967).

This article and article 9A are to be construed together so as to harmonize their provisions and to effectuate the purpose of the legislature. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

The requirements of this section with respect to cancellation must be observed or the attempt at cancellation fails. Allstate Ins. Co. v. Hale, 270 N.C. 195, 154 S.E.2d 79 (1967).

Subsection (e) of this section and § 20-310 (a) prescribe the procedure pursuant to which a policy issued for the purpose of complying with the requirements of this article may be cancelled by the insurance carrier having the right to cancel. In order to cancel such policy, the carrier must comply with these procedural requirements

of the statute or the attempt at cancellation fails. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

Insurer Must Give Department 15 Days' Notice Prior to Cancellation.—Under the 1963 amendment to the Vehicle Financial Responsibility Act, insurer must give the Department of Motor Vehicles 15 days' notice prior to the effective date of cancellation of an assigned risk policy. *Allstate Ins. Co. v. Hale*, 270 N.C. 195, 154 S.E.2d 79 (1967).

§ 20-309.1. Purchase of automobile insurance by minors.—Any minor 18 years of age or over shall be competent to contract for automobile insurance of any kind, to enter into an agreement to finance such insurance, to execute a power of attorney in connection with such financing, and also to execute a power of attorney in connection with an application for insurance with the assigned risk plan, to the same extent and with the same effect as though he had attained the age of 21 years. (1967, c. 934.)

§ 20-310. Termination of insurance.—(a) No contract of insurance or renewal thereof shall be terminated by cancellation or failure to renew by the insurer until at least fifteen (15) days after mailing a notice of termination by certificate of mailing to the named insured at the latest address filed with the insurer by or on behalf of the policyholder. The face of the envelope containing such notice shall be prominently marked with the words "Important Insurance Notice." Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every such notice of termination for any cause whatsoever sent to the insured shall include on the face of the notice a statement that financial responsibility is required to be maintained continuously throughout the registration period and that operation of a motor vehicle without maintaining such financial responsibility is a misdemeanor, the penalties for which are loss of registration plate for 60 days; and a fine or imprisonment in the discretion of the court.

(1967, c. 857, s. 3.)

Editor's Note.—

The 1967 amendment substituted "registration plate" for "license plate and suspension of driver's license" and "60" for "thirty (30)" near the end of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Opinions of Attorney General.—Honorable Edwin S. Lanier, Commissioner of Insurance, 8/7/69.

It was the intent, etc.—

The primary intent of the General Assembly was that every motorist maintain continuously proof of financial responsibility; and the obvious purpose of the notice required by subsection (a) was to confront the insured with the fact that operation of a car without maintaining proof of financial responsibility was a misdemeanor. *Perkins v. American Mut. Fire*

Time Gaps in Coverage Permitted.—The Vehicle Financial Responsibility Act of 1957 permits the possibility of time gaps in insurance coverage; that is, short periods in which vehicles are uninsured. *Fincher v. Rhyne*, 266 N.C. 64, 145 S.E.2d 316 (1965).

Stated in *Hayes v. Hartford Accident & Indem. Co.*, 274 N.C. 73, 161 S.E.2d 552 (1968).

Cited in *Grant v. State Farm Mut. Auto. Ins. Co.*, 1 N.C. App. 76, 159 S.E.2d 368 (1968).

Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

Article Must Be Read into Policy and Construed Liberally.—A policy having been issued pursuant to the assigned risk plan (§ 20-279.34) and for the purpose of fulfilling the requirement of the Financial Responsibility Act of 1957 (§ 20-309 et seq.), the provisions of that act, relative to the cancellation of such policies, must be read into this policy and construed liberally so as to effectuate the purpose of the act. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

Statutes Control Policy Provisions as to Cancellation.—The provisions of this article and article 9A, liberally construed to effectuate the legislative policy, control any provision written into a policy which otherwise would give an insurance company a greater right to cancel than is provided by the statute. *Harrelson v. State Farm Mut.*

Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

Subsection (a) must be considered in context with other provisions of this article. Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

Substantial Compliance, etc.—

Subsection (a) of this section and § 20-309 (e) prescribe the procedure pursuant to which a policy issued for the purpose of complying with the requirements of this article may be cancelled by the insurance carrier having the right to cancel. In order to cancel such policy, the carrier must comply with these procedural requirements of the statute or the attempt at cancellation fails. Harrelson v. State Farm Mut. Auto. Ins. Co., 272 N.C. 603, 158 S.E.2d 812 (1968).

This section applies both to termination by cancellation and to termination by failure to renew. Robinson v. Nationwide Ins. Co., 273 N.C. 391, 159 S.E.2d 896 (1968).

Subsection (a) relates to the notice and warning that must be given the policyholder in the event his policy is terminated by the insurer, whether the termination is by cancellation or by failure to renew. Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

The absolute privileges granted by subsections (b) and (c) of this section to an insurer, complying with the mandate thereof, does not extend to an insurer who, of its own volition, advises the policyholder of its reasons for cancelling the policy. Robinson v. Nationwide Ins. Co., 273 N.C. 391, 159 S.E.2d 896 (1968).

Right of Cancellation of Assigned Risk Policy.—It is expressly provided in subsection (b) that the provisions thereof shall not apply to policies issued under the assigned risk plan. Obviously, however, it

§ 20-310.2. Motor vehicle liability insurance; companies may not fail to renew solely by reason of age; penalties provided.—No insurance company licensed in this State to do a business of insurance, which is engaged in the writing of motor vehicle liability insurance, as the same is defined in G.S. 20-279.21, shall fail to renew any such existing policy of insurance solely because the insured has attained the age of 65 years or older.

Whenever the Commissioner of Insurance shall have reason to believe that any insurance company which is licensed to do a business of insurance in this State and is engaged in writing motor vehicle liability insurance has refused to renew policies of motor vehicle liability insurance solely because the applicant has reached the age of 65 years or older, he shall notify such company that it may be in violation of this section, and, in his discretion he may require a hearing to determine whether or not such company has actually been engaged in the practice as aforesaid. Any hearing held under this section shall in all respects comply with the hearing procedure provided in G.S. 58-54.6.

It after such hearing the Commissioner shall determine that the company has engaged in the practice of systematically failing to renew policies of motor vehicle

liability insurance because of the advanced age of the insureds, he shall reduce his findings to writing and shall issue and cause to be served upon the company charged with the violation an order requiring the company to cease and desist from engaging in such practices. After the issuance of such cease and desist order, if the Commissioner finds that the company has continued to engage in such practices, he shall impose upon such company a fine not to exceed the amount of one thousand dollars (\$1,000.00) for each separate violation.

Any company aggrieved by any order or decision of the North Carolina Commissioner of Insurance may appeal such order and decision to the Superior Court of Wake County in the same manner and under the same rules and provisions set forth in G.S. 58-9.3. (1967, c. 1072.)

Editor's Note.—The act adding this section became effective July 1, 1967.

By virtue of Session Laws 1943, c. 170,

"Commissioner of Insurance" has been substituted for "Insurance Commissioner" in the second paragraph.

§ 20-311. Revocation of registration when financial responsibility not in effect.—The Department of Motor Vehicles, upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle if the year registration has changed for 60 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of such owner, his spouse or any child or spouse of any child of the owner within less than 60 days after the registration plates have been surrendered to the Department. As a condition precedent to the reregistration of the vehicle the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3; 1967, c. 822, s. 3; c. 857, s. 4.)

Editor's Note.—

The first 1967 amendment substituted "the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle if the year registration has changed" for

"the registration of such vehicle" in the first sentence.

The second 1967 amendment deleted provisions as to suspension and reinstatement of an operator's or chauffeur's license and increased the period of revocation of registration from thirty to sixty days.

§ 20-313. Operation of motor vehicle without financial responsibility as misdemeanor.

Applied in *State v. Green*, 266 N.C. 785, 147 S.E.2d 377 (1966).

§ 20-314. Applicability of article 9A; its provisions continued.

Owner Must Show Proof of Financial Responsibility as Prerequisite to Registration.—This article requires every owner of a motor vehicle, as a prerequisite to the registration thereof, to show "proof of financial responsibility" in the manner prescribed by the Motor Vehicle Safety and Financial Responsibility Act of 1953, chap-

ter 20, article 9A. *Jones v. State Farm Mut. Auto. Ins. Co.*, 270 N.C. 454, 155 S.E.2d 118 (1967).

Section 20-279.34 is incorporated by reference into the Financial Responsibility Act of 1957 by this section. *Harrelson v. State Farm Mut. Auto. Ins. Co.*, 272 N.C. 603, 158 S.E.2d 812 (1968).

§ 20-315. Commissioner to administer article; rules and regulations.

Cited in *Government Employees Ins. Co. v. Lumbermens Mut. Cas. Co.*, 269 N.C. 354, 152 S.E.2d 445 (1967).

§ 20-319. Effective date.

Cited in *Grant v. State Farm Mut. Auto. Ins. Co.*, 1 N.C. App. 76, 159 S.E.2d 368 (1968).

ARTICLE 13A.*Certification of Automobile Insurance Coverage by Insurance Companies.*

§ 20-319.1. Company to forward certification within seven days after receipt of request.—Upon the receipt by an insurance company at its home office of a registered letter from an insured requesting that it certify to the North Carolina Department of Motor Vehicles whether or not a previously issued policy of automobile liability insurance was in full force and effect on a designated day, it shall be the duty of such insurance company to forward such certification within seven days. (1967, c. 908, s. 1.)

Editor's Note.—Section 4, c. 908, Session Laws 1967, provides that the act shall become effective July 1, 1967.

§ 20-319.2. Penalty for failure to forward certification.—If any insurance company shall without good cause fail to forward said certification within seven days after its receipt of such registered letter, the North Carolina Commissioner of Insurance shall be authorized in his discretion to impose a civil penalty upon said company in the amount of two hundred dollars (\$200.00) for such violation. (1967, c. 908, s. 2.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE
Raleigh, North Carolina

October 24, 1969

I, Robert Morgan, Attorney General of North Carolina, do hereby certify that the foregoing 1969 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

ROBERT MORGAN
Attorney General of North Carolina

